



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/148410

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 28, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Oneida County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on April 29, 2013, at Rhinelander, Wisconsin.

The issue for determination is whether there is any issue for determination by the Division of Hearings and Appeals.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Mary Rideout

Oneida County Department of Social Services  
Oneida Avenue  
PO Box 400  
Rhinelander, WI 54501

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Oneida County.
2. Petitioner was previously a recipient of FoodShare benefits.
3. Petitioner's case underwent a quality assurance review.

4. The Department deemed petitioner not cooperative with the review. The Department sent a notice to petitioner dated November 26, 2012 informing her that her FS would be ending effective January 1, 2013 due to her failure to cooperate with the review.
5. After communication with petitioner, the Department subsequently lifted the sanction on November 29, 2012. The Department provided a letter to petitioner dated November 29, 2013 informing her that the sanction was being lifted.
6. Petitioner filed a timely appeal from the November 26, 2012 notice requesting a “retraction” of the sanction.

### DISCUSSION

It is apparent from the record that the Department deemed petitioner not cooperative with a review. It issued a sanction and subsequently lifted it when it became satisfied. Petitioner never lost any benefits. The issue regarding the correctness of the sanction is moot. Petitioner’s issue is one of vindication. Petitioner now wants this ALJ to issue an order essentially absolving her of any allegation of lack of cooperation – a “retraction” as she calls it. That is akin to declaratory relief which is an equitable power. An administrative law judge does not have such equitable powers. Case law in Wisconsin has recognized that the powers of administrative agencies are limited to those expressly granted by the legislature or necessarily implied by the statutes. DOR v. Hogan, 198 Wis. 2d 792, 816, 543 N.W.2d 825 (1995), provides in pertinent part:

Few principles are as well established as the proposition that administrative agencies, as entities created by the legislature as part of the executive branch of government, have only such powers as are expressly granted to them by the legislature, or as may be necessarily implied from the applicable statutes...In determining the nature and scope of an agency's powers, its enabling statutes are to be 'strictly construed to preclude the exercise of a power not expressly granted,' and '[a]ny reasonable doubt as to the existence of an implied power should be resolved against [the agency]. (Emphasis added).

The legislature has not expressly conferred equitable powers upon administrative agencies. Chapter 227, Wis. Stats., authorizes state agencies such as the Division of Hearings and Appeals to hold contested case hearings. It also empowers such agencies to make findings of fact and conclusions of law, and to decide cases based on the relevant facts and law. There is nothing in Chapter 227, Wis. Stats. that expressly authorizes agencies such as this one, to apply equitable principles. Administrative agencies are required to accord "fair hearings" in the sense that they must accord due process with an even handed application of the law to the facts in similar cases. Neither the statutes nor case law clearly accord administrative agencies equitable powers.

### CONCLUSIONS OF LAW

There is no issue for determination by the Division of Hearings and Appeals.

**THEREFORE, it is**

**ORDERED**

That this matter is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 29th day of May, 2013

---

\sJohn P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 29, 2013.

Oneida County Department of Social Services  
Division of Health Care Access and Accountability