



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148477

PRELIMINARY RECITALS

Pursuant to a petition filed April 03, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on May 02, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined Petitioner's FS benefits for March, 2013.

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: Lee Vang

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 21, 2013, the agency issued a FS Six Month Report Form (SMRF) and instructions to the Petitioner at [REDACTED], Milwaukee, WI 53214. It informed the Petitioner that the form was to be completed and returned by February 5, 2013 in order to avoid a delay in benefits.

3. On January 30, 2013, the agency received the correspondence from January 21, 2013 as returned mail. The agency attempted to contact the Petitioner via phone but the Petitioner's last-known landline phone number was out of service, cell phone service was not working and work phone was not working.
4. On February 18, 2013, the agency issued a Notice of Decision to the Petitioner at [REDACTED], Milwaukee, WI 53214 informing the Petitioner that her FS benefits would end effective March 1, 2013 for failure to complete her six month review.
5. On February 18, 2013, the Petitioner called the agency to report a change in address and change in rent expense. On February 19, 2013, the agency mailed a duplicate SMRF to the Petitioner at her new address with a due date of February 28, 2013.
6. On February 25, 2013, the Petitioner submitted an Employer Verification of Earnings and a letter verifying that a job with V & J Holding Companies ended on September 17, 2012.
7. On February 25, 2013, the Petitioner submitted rent receipts indicating a rent expense of \$600. It also indicates that Petitioner had moved by September 1, 2012 to a new address but did not report that address to the agency until February 18, 2013.
8. On February 28, 2013, the agency issued a Notice of Decision to the Petitioner at her new address of [REDACTED], Milwaukee, WI 53215 informing her that her FS benefits would end effective March 1, 2013 for failure to complete her review.
9. On March 1, 2013, the Petitioner submitted updated pay statements for the previous 30 days but did not submit the SMRF.
10. On March 11, 2013, the Petitioner submitted a change report regarding employment and phone number but did not submit the SMRF.
11. On March 21, 2013, the Petitioner submitted the SMRF. The agency re-opened the Petitioner's FS case effective March 21, 2013. Petitioner received FS benefits for March 21, 2013 – March 31, 2013 in the amount of \$273.
12. Effective March 1, 2013, the Petitioner had gross earned income of \$915.38/month, rent expense of \$600/month, utility expenses and a household size of 5.
13. On April 3, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

FS units certified for 12 months, and subject to reduced change-reporting requirements, are required to submit a six-month report form (SMRF) in the sixth month of the certification period. FS benefits are generally certified for six months and the recertification process may be done in person or by other means, including mail, 7 CFR §273.14(b)(3).

Using the SMRF, these food units are required to report and verify the current gross earned income received by all household members. See FoodShare Handbook § 6.1.2.

In a Fair Hearing concerning the propriety of a discontinuance or reduction of benefits, such as this, the agency has the burden of proof to establish that the action taken was proper. The Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the discontinuance action was required.

In this case, the agency met its burden of proof to establish with testimony and exhibits that it timely and properly sent a SMRF to the Petitioner at her last known address. FS recipients are required to file address changes with the agency within 10 days of the change. FS Handbook, § 6.1.1.1. Petitioner failed

to report a change in her address to the agency. When the agency received the correspondence as returned mail, it attempted to contact the Petitioner via three separate phone numbers. None of the phones were in service. Therefore, the agency conducted due diligence in its attempt to contact the Petitioner for the six month review.

When the Petitioner contacted the agency on February 18, 2013, the agency updated her address, sent her another SMRF and gave her an additional 10 days to return the SMRF. Petitioner did not dispute that the SMRF was not returned until March 21, 2013. The Petitioner did submit pay statements regarding her income on March 1, 2013 and argues that this was sufficient. She argues that she did not receive the duplicate SMRF that was mailed to her new address. Petitioner's arguments are without merit. Even if she did not receive the duplicate SMRF, she was aware that she was required to file one by February 28, 2013. Submitting employer verifications on February 25, 2013 and pay statements on March 1, 2013 without the SMRF was not timely and not sufficient to keep her case open. She failed to submit good cause for submitting an untimely SMRF.

When a FS case is closed for failure to complete the SMRF, the agency may allow a FS case to reopen if the SMRF is completed in the calendar month following the month the SMRF was due. FS Handbook, § 6.1.2. Because the Petitioner submitted the SMRF before the end of March, she was eligible for pro-rated benefits from March 21 – 30, 2013 without needing to re-apply.

I reviewed the agency calculation of the Petitioner's FS benefits for March, 2013 as well as benefits effective April, 2013. In calculating the benefits, the agency used the previous 30 days of pay as indicated on the Petitioner's pay statements. When determining the March, 2013 benefits, the agency used the pay statement for the periods of January 16, 2013 – January 28, 2013 and January 30, 2013 – February 12, 2013. The Petitioner worked an average of 57.38 hours/week at \$7.42/hour for a weekly average of \$425.76. FS regulations require the agency to calculate a monthly income. In this case, the agency counted \$915.38/month (\$425.76 x 4.3 weeks). I reviewed the agency budget screen and find the agency properly determined the Petitioner's pro-rated FS benefits for March, 2013 as \$273.

CONCLUSIONS OF LAW

The agency properly pro-rated the Petitioner's FS benefits for March, 2013 as \$273.

THEREFORE, it is **ORDERED**

That the petition be, and hereby 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 Milwaukee,
Wisconsin, this 29th day of May, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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

Milwaukee Enrollment Services
Division of Health Care Access and Accountability