



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148915

PRELIMINARY RECITALS

Pursuant to a petition filed April 23, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sauk County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on June 05, 2013, at Baraboo, Wisconsin. While the record was held open, the county agency submitted to the Division of Hearings and Appeals (DHA) a June 11, 2013 letter and documents regarding the calculation of petitioner's FS benefits as of May, 2013. However, the county agency did not indicate that those documents were sent to the petitioner for any response to DHA. As a result, this case must be remanded for the petitioner to receive a new notice of decision and a copy of that June 11, 2013 letter and documents by ESS Emery.

The issue for determination is whether the county agency met its burden of proof to establish that it accurately calculated the petitioner's FoodShare (FS) benefits, and as a result correctly discontinued the petitioner's FS benefits effective May 1, 2013, due to net household income above the FS net income eligibility limits for a group of three.

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: Cheryl Emery, ESS
Sauk County Department of Human Services
505 Broadway, 4th Floor
PO Box 29
Baraboo, WI 53913

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County who resides with her husband and one child in a household of three.
2. The petitioner's household receives some unearned income.
3. The petitioner received FoodShare (FS) benefits for a FS household of three.
4. The county agency did not provide during the hearing reliable evidence or documentation to establish the unearned income (including Social Security, SSI, and unemployment compensation) for all the members of petitioner's FS household.
5. The county agency sent an April 15, 2013 notice to the petitioner stating that her FS benefits would discontinue effective May 1, 2013, due to total net household income which was allegedly above the net income limit for a FS household of three.
6. While the record was held open, the county agency submitted to the Division of Hearings and Appeals (DHA) a June 11, 2013 letter and documents regarding the calculation of petitioner's FS benefits as of May, 2013. However, the county agency did not indicate that those documents were sent to the petitioner for any response to DHA. See above Preliminary Recitals.

DISCUSSION

During the June 5, 2013 hearing, the county agency representative was unable to provide reliable evidence to establish with accuracy the total unearned income of petitioner's FS household. As a result, the hearing record is questionable whether the county agency accurately and correctly discontinued the petitioner's FS benefits as of May 1, 2013 due allegedly to net household income above the FS net income eligibility limits for a household of three. During the hearing, the county agency representative was unable to present reliable, non-hearsay evidence to establish that it had correctly and accurately calculated and determined petitioner's household's eligibility for FS benefits. See Findings of Fact #4 - #6 above and Preliminary Recitals.

In any denial or discontinuance of benefits, the county agency has the burden of proof to establish that it correctly and accurately determined and calculated the recipient's benefits. Based upon the available hearing record, it appears clear that the county agency needs to confirm the re-calculation of petitioner's FS benefits retroactive to May 1, 2013 by sending to petitioner a new, detailed notice of decision and a copy of ESS Emery's June 11, 2013 letter and documents. Accordingly, for the above reasons, the county agency failed to meet its burden of proof to establish that it correctly and accurately calculated the petitioner's household income, and as a result has not established with reliable evidence that the county agency correctly discontinued the petitioner's FS benefits effective May 1, 2013, due to net household income above the FS net income eligibility limits for a group of three.

As dicta, if the petitioner wishes to dispute the new FS notice of decision, she would need to file a new FS appeal at DHA and attach a copy of that new notice of decision to her appeal letter to DHA.

CONCLUSIONS OF LAW

1. The county agency did not meet its burden of proof to establish a prima facie case that it correctly and accurately calculated the petitioner's household income, and then correctly discontinued the petitioner's FS benefits effective May 1, 2013, due to net household income above the FS net income eligibility limits for a group of three.

2. The county agency needs to re-calculate petitioner's FS household income for a household of three retroactive to the May 1, 2013 FS discontinuance date, and issue to the petitioner a new, detailed notice of decision regarding her FS benefits retroactive to May 1, 2013

THEREFORE, it is

ORDERED

The matter is remanded to the county agency with instructions to: a) re-calculate the petitioner's FS household income for a group of three retroactive to the May 1, 2013 FS discontinuance date; and b) issue to the petitioner a new, detailed notice of decision regarding her FS benefits (and a copy of ESS Emery's June 11, 2013 letter and documents) retroactive to May 1, 2013 for a FS household of three, within 10 days of the date of this Decision.

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 20th day of June, 2013

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

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

The preceding decision was sent to the following parties on June 20, 2013.

Sauk County Department of Human Services
Division of Health Care Access and Accountability