



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/150054

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the St. Croix County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on July 22, 2013, at Alma, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner received more FoodShare than she was entitled to because she did not live in Wisconsin.

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 Odle

St. Croix County Department of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Buffalo County.
2. The county agency seeks to recover \$2,936 in FoodShare the petitioner received from November 1, 2012, through May 31, 2013.
3. The petitioner did not live in Wisconsin after early September 2012.

DISCUSSION

Federal regulations require state agencies to “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. The county agency seeks to recover \$2,936 in FoodShare the petitioner received from November 1, 2012, through May 31, 2013, because it contends that she was not a Wisconsin resident after the end of August or early in September 2012.

FoodShare recipients must live in the state in which they apply. The residency requirement is not strict. States cannot impose durational requirements or require a household to live in a permanent dwelling, have a fixed address, or intend to remain in the state. 7 CFR § 273.3(a). The petitioner contends that she remained a Wisconsin resident throughout the period in question. She has little credibility. She stated in her appeal, and told her worker, that she would go to [REDACTED], New Mexico for “short periods.” When it was pointed out at the hearing that every FoodShare transaction she made after August 31, 2012, was outside of Wisconsin, and most were near [REDACTED], she said that her husband went back and forth to Wisconsin every month, while she remained in New Mexico. In response to my follow-up questions, she stated that he drove a Harley motorcycle that got about 30 miles per gallon. [REDACTED] is 1,500 miles from Mondovi, Wisconsin, meaning that he used approximately 100 gallons of gas and spent over \$300 on that gas for each round trip. He would also have to eat and stay somewhere along the way. When I asked how they paid for this, she said they had a business buying and selling junk. However, she reported to the agency that this business lost money, meaning that either he could not afford these trips, and thus did not take them, or that she did not report income to the agency. She had no answer when asked how he drove the motorcycle to Wisconsin in the winter. If her husband spend most of his time in Wisconsin, which she eventually seemed to assert (her story was fluid throughout the hearing), and she spent all of her time in New Mexico or areas near there, she had only a one rather than a two-person household and would have been entitled to fewer benefits regardless of where she lived. Given this evidence, I find that even under the relaxed FoodShare residency requirements, she did not live in Wisconsin after early September 2012 and was no longer eligible to receive benefits through this state.

Recipients must report a change of circumstances within 10 days. 7 CFR § 273.12(a)2. This means that the petitioner should have reported that she no longer lived in Wisconsin sometime around the middle of September. Agencies must act on reported changes the month after receiving them. 7 CFR § 273.12(c)(2). If the petitioner had notified the agency that she had moved out of Wisconsin in September, it would have acted on that change in October, and her benefits would have ended in November. The agency correctly seeks to recover all benefits provided from November 1, 2012, through May 31, 2013, when her benefits stopped.

CONCLUSIONS OF LAW

The petitioner was ineligible for FoodShare through the state of Wisconsin from November 1, 2012, through May 31, 2013, because she did not live in that state.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 30th day of July, 2013

\sMichael D. O'Brien
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 July 30, 2013.

St. Croix County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability