



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/150205

PRELIMINARY RECITALS

Pursuant to a petition filed June 21, 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 July 24, 2013, by telephone.

The issue for determination is whether the Department correctly discontinued the petitioner's FS effective July 1, 2013.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
7133 W Grantosa Dr
Milwaukee, WI 53218

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Mr. Lee Yang, HSPC
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner applied for FS on May 24, 2013. The agency approved that application, and correctly issued expedited, prorated FS of \$51 for May 2013, and the maximum full allotment for one person of \$200 for June 2013.

3. The agency correctly declined to include the petitioner's two children in her FS household. Per court order, placement of the children is with the father, and the petitioner has weekend visitation (Saturday morning into Sunday).
4. On May 28, 2013, the agency mailed a verification request letter to the petitioner. See, Exhibit 4. The letter asked for verification of the petitioner's self-employment income from [REDACTED], due by June 24, 2013. The petitioner did not supply the requested verification, which would have been her written declaration that she is not currently receiving any income from her self-employment.
5. On June 25, 2013, the Department issued written notice to the petitioner advising that her FS would be discontinued effective July 1, 2013. The basis for closure was failure to supply the requested income verification. The petitioner appealed, and aid was ordered continued pending appeal. On June 29 and July 1, 2013, a Department worker attempted to telephone the petitioner regarding the problem with her FS case, but was unable to reach the petitioner.
6. The petitioner identified [REDACTED] [REDACTED] as self-employment on her May 2013 application, but listed zero monthly earnings from the business. The petitioner last engaged in work activity for [REDACTED] [REDACTED] in April 2013. She has received no self-employment income from May 2013 to the present. The petitioner testified to these facts at hearing. Due to verified illness, she has not kept up with opening and responding to her mail.

DISCUSSION

An agency must ask a FS applicant or recipient to verify income at application and at annual review. 7 C.F.R. 273.14.(a); *FS Wisconsin Handbook (FSWH)*, 2.1 and 2.2.1, available at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. The agency did so here.

The agency must give the client at least 10 days (or 30 days from the date of an application filing) to supply requested verification. *Handbook*, §1.2.1.2. The responsibility for supplying verification then rests on the recipient. *Id.*, §1.2.1.3. When requested income verification is not timely received, the agency may correctly deny an application or close a case undergoing review. *Id.*, §1.2.4.1; 7 C.F.R. §273.2(g)(3) (January 2010). However, when the recipient tells the agency that she cannot get the verification, the burden shifts to the agency to assist her. If neither party can obtain the verification, the agency is to proceed with the best information available. *Id.*, §1.2.1.3. See in accord, the federal rule at 7 C.F.R. §§273.14(e)(1), 273.2(d)(1), and 273.2(f)(5)(i). The federal rule also instructs the agency to give the recipient the benefit of the doubt as to whether she is cooperating with its request. *Id.*, §273.2(d)(1).

The Department did nothing amiss here. The petitioner failed to submit a statement declaring that she had zero income (a statement that she had already made in her application) due to her illness. She verified her condition in exhibits submitted to the Administrative Law Judge. She testified at hearing that she has zero income, and that she was too ill to deal with sending in a "no income" declaration. This Administrative Law Judge will stretch the boundary of concluding that the petitioner was unable to timely submit the requested verification in this case. ***The petitioner should not assume that this boundary will be stretched in this manner in the future;*** she should send in any requested verification on time, or promptly contact the agency and explain why she cannot do so.

CONCLUSIONS OF LAW

1. The petitioner was unable to send in a statement confirming her application declaration that she had zero self-employment income, due to verified illness.
2. The petitioner had no self-employment income from May 2013 to the present time.
3. The Department correctly determined that the petitioner has an FS household of one person.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to re-open the petitioner's FS case effective July 1, 2013. This action shall be taken 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 25th day of July, 2013

\sNancy J. Gagnon
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 25, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability