



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/151975

PRELIMINARY RECITALS

Pursuant to a petition filed September 11, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sawyer County Human Services in regard to FoodShare benefits (FS), a hearing was held on October 24, 2013, by telephone.

The issue for determination is whether the petitioner's August 29, 2013 FS application was correctly denied.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Beulah Garcia, Resolution Coordinator
Northern IM Consortium

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. Prior to September 2013, the petitioner received FS benefits from Illinois. She moved to Wisconsin in mid-August 2013, and filed an FS application as a household of one person on August 29, 2013. The petitioner was advised by a [REDACTED] [REDACTED] worker (not a county employee) in [REDACTED] that she should no longer use her Illinois FS card, so the petitioner asserts that she destroyed her Illinois card.

3. The petitioner settled in at [REDACTED], [REDACTED], and underwent her telephonic application interview on September 10. The county agency worker who performed that interview correctly told the petitioner that she could have used the FS benefits that had been put on the Illinois card for August. That agency worker advised the petitioner that she should call her Illinois contact number and cancel her Illinois FS case, thereby allowing a Wisconsin FS case to open.
4. The petitioner then telephoned a number associated with the Illinois FS program in Cook County. She reached a voicemail box and left a message. That effort and her subsequent telephonic efforts were not successful in getting through to a person to assure closure of her Illinois FS case. The petitioner advised the Department on or before October 4 that she was having difficulty in verifying closure of her Illinois FS case.
5. On October 4, the Department's designee, contractor O'Brien & Associates, contacted "staff at the Illinois Department of Human Services." Said staff reviewed records and reported that the petitioner had an open FS case in Cook County, Illinois, with benefits issued for October 2013. The case was not in "pending closure" status. Apparently, O'Brien did not ask if the petitioner's transaction record showed signs of usage of the FS card in September or October. *See*, Exhibit 3.
6. On October 8, 2013, the Department issued written notice to the petitioner advising that her FS application had been denied. The basis for denial was that the petitioner was receiving the FS benefit in another state. *See*, Exhibit 1.

DISCUSSION

At application, the agency must verify certain information. The agency must give the client at least 10 days to supply requested verification. *Foodshare Wisconsin Handbook*, §1.2.1.2. The responsibility for supplying verification then rests on the recipient. *Id.*, §1.2.1.3. When requested mandatory 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). 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:

If all attempts to verify the information have been unsuccessful because the person or organization providing the information has failed to cooperate with the household and agency (for example, by charging a fee or refusing to complete a verification form), and all other sources of verification are unavailable, determine an amount to be used for certification purposes based on the best available information. Clearly document the attempts to obtain verification and the reasoning for the estimate that is used. Best available information may include; customer statement, oral or written.

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).

In this case, the petitioner has not succeeded in verifying closure of the petitioner's Illinois case, and the contractor confirmed that the case is open without confirming benefits usage or the reason for an open case for a woman who no longer lives in Illinois. The apparent ongoing issuance of Illinois FS benefits to the petitioner's Illinois FS card presented a problem – it created the possibility that the petitioner might receive duplicate benefits from two states:

3.4.1 DUAL MEMBERSHIP & DUPLICATE BENEFITS

7 *CFR* 273.3(a)

A person cannot be a member of more than 1 food unit and 1 FS group in the same month except residents of shelters for battered women and children.

Persons moving to Wisconsin from another state are not eligible to receive duplicate FS benefits. States typically issue benefits on either a calendar or fiscal month. A fiscal month cycle provides benefits from a date in one month to a corresponding date in the next month. California (Fresno), Massachusetts, Nevada and South Dakota issue on a fiscal month cycle. Illinois issues benefits by calendar month (first day through the last day of the month) and by fiscal month (16th through 15th). Wisconsin issues on a calendar month cycle.

Workers should contact the other state to verify the FS end date.

FSWH, § 3.4.1.

The petitioner cannot legally continue to receive FS from Illinois, because she does not live there. She has unsuccessfully attempted to close her Illinois case, and has reported her failure to the Department. It is not appropriate to continue to deny her FS until such time as Illinois closes her case for failure to complete a periodic review (which might be as long as 10 months from now). Thus, I will direct the Department to open a Wisconsin FS case for the petitioner effective November 1, 2013. The Department should notify Illinois that the petitioner lives in Wisconsin and has an FS case opening in this state on November 1. I am not directing the issuance of Wisconsin FS for September and October because I have no transaction history that shows me whether or not the petitioner accessed any Illinois FS during those months. I cannot risk a possible double issuance of benefits in those two months.

CONCLUSIONS OF LAW

1. The petitioner attempted to close, and verify closure, of her Illinois FS case, without success. She reported this difficulty to the Department.
2. The petitioner is eligible for FS in Wisconsin effective November 1, 2013.
3. The Department shall assist the petitioner in notifying Illinois that her FS case should close November 1, 2013.

THEREFORE, it is

ORDERED

That the petition is *remanded* to the Department with instructions to (1) open the petitioner's FS case effective November 1, 2013, if she is financially eligible for FS, and (2) notify the Illinois Department of Human Services that the petitioner now resides in Wisconsin and will have an open FS case in Wisconsin effective November 1, 2013. In all other respects, the petition 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 October, 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 October 29, 2013.

Sawyer County Human Services
Division of Health Care Access and Accountability