



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152113

PRELIMINARY RECITALS

Pursuant to a petition filed September 13, 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 October 23, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in its shifting of petitioner's two children to their father's FS case effective in the month of September 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: Jose Silvestre
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Petitioner and her ex-husband have 50/50 placement of 4 children and a marital settlement agreement that allows each parent to receive FS for two children each.

2. On July 22, 2013, the Department sent notice to petitioner informing her that she was required to complete a six month report form with updated information to continue FS eligibility. The notice informed petitioner that she could file online or by mail and included a blank copy of the form. The notice called on petitioner to submit the form by August 5, 2013 “to avoid a delay in your benefits.”
3. On August 2, 2013, mail was returned to the agency from the postal service and indicated a new mailing address for petitioner.
4. On August 19, 2013, the Department sent notice to petitioner that the six month report form had still not been received and that FS would be ending on September 1, 2013 unless the SMRF and all verification are sent.
5. On August 26, 2013, the Department sent another notice to petitioner that the six month report form had still not been received and that FS would be ending on September 1, 2013 unless the SMRF and all verification are sent.
6. The agency distributed FS for September for the two children in question to the father’s case.
7. The petitioner completed the SMRF on September 5, 2013. Petitioner then received benefits for herself for the month of September and the children were returned to her case to receive FS for October.

DISCUSSION

Petitioner only argues that she wants to get the September FS for her two children despite that this allotment was already disbursed to the children’s father. But, the agency cannot distribute benefits for the two children to her because the benefits were already provided to the father. See FoodShare Wisconsin Handbook at § 3.4.1. The agency distributed the benefits to the father to ensure that the minor children had FS available to them. Petitioner was sent at least three notices that indicated her responsibilities to ensure that the FS went uninterrupted. She argues that she did not know of the requirement. She also argued that she moved on July 1, 2013 and did not receive mail. There is no indication that petitioner provided the agency with her new address. It appears from the case comments that the agency only learned it when mail was returned on August 2, 2013. But, the record indicates that even if she did not receive the SMRF notice, the August 19 and August 26 notices were mailed to her new and correct address. Petitioner still did not respond to the agency until September 5. She speculates that those notices were misplaced.

Petitioner argues that her husband will not reimburse her for the FS he got for September. That is unfortunate, but the FS for the children was distributed and cannot be duplicated under the facts here. The agency was not in error. The failure was petitioner’s.

CONCLUSIONS OF LAW

The Department did not err in distributing the FS allotment for the two children to the children’s father.

THEREFORE, it is

ORDERED

That this 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 1st day of November, 2013

\sJohn P. Tedesco
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 November 1, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability