



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/152339

PRELIMINARY RECITALS

Pursuant to a petition filed September 23, 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 29, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied Petitioner’s request to back date her FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Pang Thao Xiong, Income Maintenance Specialist II
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner completed a FoodShare renewal on September 12, 2013, at which time she reported an increase in rent from \$234 to \$276. (Exhibit 3, pg. 8; testimony of Ms. Thao Xiong)

3. On September 13, 2013, the agency sent Petitioner a notice indicating that effective October 1, 2013, it was increasing her FoodShare benefits from \$19.00 per month to \$32.00 per month. (Exhibit 4)
4. On September 18, 2013, the Petitioner contacted the agency to request a back date of her benefits, because the rent increase became effective May 1, 2013, but the agency denied her request. (Exhibit 3, pg. 8; testimony of Ms. Thao Xiong)
5. Petitioner filed a request for fair hearing that was received on September 23, 2013.
6. Petitioner is 84 years old, lives alone, has income of \$1008.00 per month for Social Security and pays rent in the amount of \$276 per month. (Testimony of Petitioner)

DISCUSSION

Petitioner asks that the increase in her FoodShare benefits that became effective October 1, 2013, be backdated to May 1, 2013, because that is when her rent increased. It is the agency's contention that because Petitioner did not timely report the change it cannot backdate her benefits.

An elderly individual is a food unit member age 60 or older. *FoodShare Wisconsin Handbook (FSH)*, §3.8.1.1. Because Petitioner is over age 60, she is considered to be elderly, for FoodShare purposes.

Petitioner does not have any earned income. Her sole source of income is a monthly payment from the Social Security Administration.

Elderly, blind or disabled individuals/food units that do not have earned income must report changes in shelter and utility expenses within 10 days of the date the change is known to the individual/food unit. *FSH* §6.1.1.1 Petitioner became aware that her rent would be increasing to \$276 per month, by April 23, 2013. (See Exhibit 3, pg. 25) Consequently, Petitioner needed to report the change by May 3, 2013. Petitioner did not do so and as a consequence missed out on additional FoodShare benefits.

When there is an under-issuance of FoodShare benefits, the agency may only restore the benefits, if the individual/food group did not cause the under-issuance and if the under-issuance occurred 12 months before it was discovered. *FHS* §7.4.1.1

Petitioner caused the under-issuance of FoodShare benefits, because she did not timely report the change in shelter expense, as required by *FSH* §6.1.1.1. Consequently, the agency may not backdate her FoodShare benefits.

CONCLUSIONS OF LAW

The agency correctly denied Petitioner's request to backdate her Foodshare benefits.

THEREFORE, it is

ORDERED

That 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 Milwaukee,
Wisconsin, this 31st day of October, 2013.

\sMayumi M. Ishii
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 31, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability