



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152432

PRELIMINARY RECITALS

Pursuant to a petition filed October 1, 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 30, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner’s FS effective September, 2013, due to a failure to verify income.

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: Katherine May, HSPC
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He is a one person FS household and he received \$94 of FS in each of the months of August and September, 2013.
2. On or about August 28, 2013, the petitioner submitted two bi-weekly paystubs from his job with the postal service, dated August 2, 2013 and August 16, 2013. Gross wages were \$594.78 and \$971.80, respectively. At that time he also provided a statement that he pays child support.
3. On or about September 18, 2013, the petitioner reported to the agency that his work had ended.

4. However, his work had not ended. He received gross pay of \$1,001.42 on August 30, 2013; \$540.34 on September 13, 2013; and \$430.80 on September 27, 2013. This last payment was notated by the comment that he worked zero hours in that pay period. See, Exhibits #1, #3 and #4, pp. 1-2. On October 11, 2013, he received gross pay of \$960.90; and on October 25, 2013, he received gross pay of \$336.69. See, Exhibits #3 and #4, p. 4.
5. Meanwhile, on September 19, 2013, the agency issued a verification request letter to the petitioner requesting that he submit proof of his pay for the past 30 days in the form of his pay stubs; or the enclosed Employer Verification Request Form; or a statement from his employer with the same information. The request told the petitioner he must do so by September 30, 2013.
6. On September 20, 2013, the petitioner provided a bi-weekly paystub dated September 13, 2013. He also provided a handwritten note saying he was injured at work on August 23, 2013, and hadn't received any pay; and needed some assistance. See, Exhibits #2 & #4., p. 2.
7. On September 27, 2013, the county agency obtained a completed wage history for the petitioner's job at the postal service from the income reporting service called The Work Number, beginning in December, 2011, and running through September 27, 2013, pay date. See, Exhibit #3.
8. On September 30, 2013, the agency ran a FS budget for the petitioner apparently counting the income reported for August 2 (\$594.78) and August 16 (\$971.80), adding them together and dividing by two to arrive at an average biweekly pay, and then treating the bi-weekly average with the 2.15 biweekly multiplier to arrive at approximately \$1,684 in earned income. However, the FS budget indicates the petitioner was mathematically determined to be eligible for \$16 of FS, while the screen notes itself that the claim is "DENIED". Apparently, the agency denied the application because it was determined that the petitioner had not verified his income sufficiently. See, Exhibit #3, attached FoodShare Budget screen run on September 30, 2013. See also, Exhibit #1, attached Case Comments for September 30, 2013, indicating this was the reason for denial.
9. On October 1, 2013, the agency issued a Notice of Decision to the petitioner informing him that he had failed to verify requested information and his FS case was closed effective October 1, 2013.
10. On October 1, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals; benefits were not continued pending the hearing decision.

DISCUSSION

This is an odd procedurally based case revolving around an alleged failure to verify. By the verification deadline, the petitioner had provided 3 of 4 consecutive bi-weekly paystubs for August 2, and 16; and September 13, 2013. And in any event, the agency filled in the voided period by obtaining the data for August 30, 2013, from The Work Number by September 30, 2013.

The agency possessed at that time fully accurate information on this 1 person household's income and expenses. Granted, the petitioner was not the model of complete and clear verification. His information came in spotty and piecemeal, to outstations. He alleged he was off work due to injury but produced nothing showing that this status continued beyond August 23, 2013. And thereafter, he continued to work hours and get paid by his ongoing employer. His income *does* fluctuate between pay periods.

I am satisfied that the agency should have processed the FS budget using the best evidence available on September 30, 2013, and suppressed the denial code arising from failure to verify. See, *FoodShare Wisconsin Handbook*, § 1.2.1.3. An agency is required to use the best available information; and not to over-verify when it possesses the information in other forms. The matter is remanded for the agency to rescind that failure to verify denial determination and issue the petitioner all FS to which he was otherwise entitled retroactive to October 1, 2013.

CONCLUSIONS OF LAW

That the county agency incorrectly over-verified in discontinuing the petitioner's FS effective October 1, 2013; his eligibility must be reviewed retroactive to October 1, 2013.

THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to: rescind the denial of the petitioner's FS benefits retroactive to October 1, 2013; review and re-determine his eligibility for FS retroactive to October 1, 2013; and issue all FS to which he was otherwise entitled, if any, retroactive to October 1, 2013. These actions shall be completed 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 15th day of November, 2013

\sKenneth D. Duren, Assistant Administrator
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 15, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability