



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/152454

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 26, 2013, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Marathon County Dept. of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 30, 2013, by telephone.

The issue for determination is whether petitioner received sufficient FS in 2013.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Maikou Yang  
Marathon County Dept. of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner receives FS and also Wisconsin Works (W-2) benefits. On December 11, 2012, she contacted the W-2 agency to report a change of address and that she had a monthly rent obligation. She filed a copy of her lease on December 12. Because the rent obligation is not part of the W-2 determination, nobody at the W-2 agency updated petitioner's rent expense from \$0 to \$485.

3. Petitioner received a series of notices concerning FS thereafter. All showed no rent expense but did show utilities as an expense. It is noted that they also showed no income because W-2 payments are included in the system calculation.
4. In May, 2013 petitioner did an FS review. She signed a review form that stated that she paid \$0 for rent.
5. In September, 2013, petitioner contacted the FS agency to report that she pays \$485 in rent. The change was made effective October 1, 2013. She then filed this appeal seeking to have the change backdated to December, 2012.

### DISCUSSION

If a person reports a change that will result in increased FS, the general rule is that the increase will take place in the month after the change is reported. 7 C.F.R. §273.12(c)(1). The FS Handbook, Appendix. 6.1.3.3, requires:

All reported changes that cause an increase in the FS benefit including person additions, increases in expenses, etc., will be effective the first of the month following the report month if required verifications are received within 10 days of the request for verification.

The FS rules require changes to be made in the month after the change is reported, not the month that the change occurs.

Another federal code provision, I believe, takes precedence in this case. 7 C.F.R. §273.17(a)(1) provides:

The State agency shall restore to households benefits which were lost whenever the loss was caused by an error by the State agency ... or if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits. Furthermore, unless there is a statement elsewhere in the regulations that a household is entitled to lost benefits for a longer period, benefits shall be restored for not more than twelve months prior....

This is not an instance where petitioner failed to report the change to the proper agency. It is a longstanding tenet that a report to a W-2 agency should trigger action in all benefit programs. Furthermore, petitioner testified that she did not contact her W-2 worker directly but that she contacted the general call center. Either way, someone at the agency should have updated the rent amount when the change was reported and verified.

I will not find the appeal to be untimely. The notices are not clear enough to trigger automatically the notion that the benefits were calculated without the rent expense factored in. Furthermore, since the error was made before the May, 2013 FS review, petitioner's failure to note the error is not a basis for limiting the restoration of the lost FS. FS should be restored back to January, 2013, the first month after the change was reported.

### CONCLUSIONS OF LAW

The agency should restore to petitioner any FS lost as the result of its failure to update her rent expense when she reported and verified it.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to re-determine petitioner's FS retroactive to January 1, 2013 by including petitioner's \$485 monthly rent expense. The county then shall issue supplemental FS for the period January 1 through September 30, 2013 in the difference between what was issued and the amount that would have been issued had the rent be included in the calculation. The county shall take this action within 10 days 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 1st day of November, 2013

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\sBrian C. Schneider  
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.

Marathon County Department of Social Services  
Division of Health Care Access and Accountability