



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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152774

PRELIMINARY RECITALS

Pursuant to a petition filed October 14, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on November 11, 2013, at Wausau, Wisconsin.

The issue for determination is whether the agency erred in its termination of petitioner from the FS Program

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: MaiKou Yang

Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner was enrolled in the FS Program as a group of one.

3. As part of a periodic review, petitioner was to attend an interview on August 13, 2013. Petitioner did not attend the interview.
4. On August 19, 2013, the Department sent notice to petitioner informing him that he would be terminated from the FS program effective 9/1/13 due to his failure to complete a periodic review of eligibility.
5. Petitioner was in contact with the agency on August 21 and made appointment for interview.
6. On September 13, the petitioner completed the required periodic review appointment.
7. On September 16, 2013, the Department sent notice to petitioner informing him that was required to provide certain documentary verification, including veteran benefits, by September 25, 2013.
8. Petitioner claims that he submitted the verification by dropping it off at the agency prior to the deadline.
9. The agency claims it did not receive the verification by the deadline.
10. Due to non-receipt of the veteran's benefit documentation, the agency closed the FS case effective 9/1/13.
11. Petitioner filed an appeal.

DISCUSSION

The agency claims the termination was proper based on petitioner's failure to comply with the requirement of verification spelled out in the September 16, 2013 notice. This notice was dated, and presumably mailed on, September 16. The notice required the documentation due on September 25.

The FoodShare Wisconsin Handbook requires the agency to provide a petitioner with 10 days from the verification request to provide the documentation to the agency (see *FSWH* § 1.2.1). That did not happen here. The notice requesting the information was issued on September 16. There is no indication in the record as to when it was received by petitioner. But, even using the issuance date, the Department only provided nine days until September 25 for the required response. In counting time for this purpose, one does not begin counting on the date of issuance. The counting must begin one day "after" the triggering event. See, e.g. Wis. Stat. § 801.15 ("the day of the act, event or default from which the designated period of time begins to run shall not be included"); see also Federal Rules of Civil Procedure Rule 6. So, the first day counted is the 17th of September. The day of the deadline was the 25th of September which was the 9th day after the date the notice was printed. The notice was invalid on its face and the action was error because it was based on a flawed notice.

I note that even if the notice had not been flawed, I find the testimony of the petitioner's daughter credible. She has navigated the review process previously on behalf of her father. She knew what needed to be provided. Her story about providing it to the agency was believable. She clearly had a statement of the veteran's benefits that was printed prior to the deadline. She claims she included it in the submission to the agency with other documentation. I find it more likely on this record that the agency erred in processing the documentation.

CONCLUSIONS OF LAW

The Department's Notice of Proof Needed was flawed and invalid and the subsequent termination based on failure to comply with the flawed notice was error.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and its county agent with instructions to restore FS benefit eligibility and issue appropriate supplements back to September 1, 2013. These actions must be completed 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, Room 651, 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 November, 2013

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 29, 2013.

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