



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152781

PRELIMINARY RECITALS

Pursuant to a petition filed October 11, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services in regard to FoodShare benefits (FS), a telephonic hearing was held on November 04, 2013, at Fond Du Lac, Wisconsin.

The issue for determination is whether petitioner is entitled to supplemental FS benefits for CW for the months of August and 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, Room 651
Madison, Wisconsin 53703

By: Deb Bohlman, ESS
Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County who receives FoodShare (FS) benefits.
2. During the months of August and September, 2013, petitioner received FoodShare (FS) benefits for a household of three in the amount of \$263 for a household of three: petitioner, her daughter, ZW and son, ZW. Petitioner did not receive FS for her stepdaughter CW.

3. CW is the birth daughter of [REDACTED] [REDACTED].
4. CW visited her mother [REDACTED] [REDACTED] for less than one month during about July, 2013.
5. On or about July 1, 2013, [REDACTED] [REDACTED] inaccurately reported to the county agency that CW was residing with her and requested that CW be added to her FS group.
6. The county agency incorrectly and inaccurately added CW to Ms. [REDACTED]'s FS group when CW was only "temporarily absent" from the petitioner's FS household per FoodShare Wisconsin Handbook, 3.2.1.2, "Temporary Absence."
7. During the November 4, 2013 hearing, the county representative stipulated that CW should have been included in petitioner's FS household during August and September, 2013, and that FS should have been issued to petitioner for a FS household of four for those two months.
8. The county agency sent a September 9, 2013 Notice of Decision to the petitioner stating that her FS would increase from \$263 to \$412 due to an increase of one ([REDACTED]) to a FS household of four.

DISCUSSION

During the November 4, 2013 hearing, the county agency representative agreed that petitioner should have received FS benefits for four during August and September, 2013 (which would have included CW in petitioner's FS household). However, the county argued that because CW was incorrectly included in her mother's FS household, FS benefits could not be supplemented to petitioner because a person cannot be a member of more than 1 food unit per FoodShare Wisconsin Handbook, 3.4.1, "Dual Membership & Duplicate Benefits."

However, in reviewing this case, the petitioner was clearly entitled to receive the additional FS benefits for CW (a fourth person in petitioner's household) for the months of August and September, 2013. However, this is not "duplicate" benefits, because based upon the hearing record I conclude that [REDACTED] [REDACTED] (petitioner's birth mother) was not entitled to include CW in her household, and thus Ms. [REDACTED] received a FS overpayment for CW for the months of August and September, 2013. See above Findings of Fact. The county agency may wish to pursue a FS overpayment against [REDACTED] [REDACTED] for those two months.

In any case, based upon the county agency's error, the petitioner is entitled to supplemental FS benefits for CW for the months of August and September, 2013 to increase her FS benefits from a household of three to four for those two months.

CONCLUSIONS OF LAW

The petitioner is entitled to supplemental FS benefits for CW for the months of August and September, 2013 to increase her FS benefits from a household of three to four for August and September, 2013.

THEREFORE, it is

ORDERED

The matter is remanded to the county agency with instructions to issue supplemental FS benefits to the petitioner for CW for the months of August and September, 2013 (to increase her FS benefits from a household of three to a household of four for August and September, 2013), 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, 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 6th day of December, 2013

\sGary M. Wolkstein
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 December 6, 2013.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability