



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152931

PRELIMINARY RECITALS

Pursuant to a petition filed October 15, 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 November 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly discontinued the Petitioner's FS benefits effective September 1, 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: Pang Thao Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On March 26, 2013, the Petitioner submitted an online access application for FS benefits. He reported an address of [REDACTED], South Milwaukee.

3. On June 24, 2013, the agency issued an informational notice to the Petitioner about his FS benefits. The notice was mailed to the Petitioner at [REDACTED], #3, Milwaukee, WI 53202.
4. On July 15, 2013, the agency issued a renewal for Family Planning Services to the Petitioner at [REDACTED], #3, Milwaukee, WI 53202.
5. On July 22, 2013, the agency issued a FS Six Month Report Form (SMRF) to the Petitioner at [REDACTED], #3, Milwaukee, WI 53202. The notice indicated the report must be completed and returned to the agency by August 5, 2013 in order to avoid a delay in benefits.
6. On August 1, 2013, the Petitioner contacted the agency to update his address and other information.
7. On August 15, 2013, the Petitioner submitted an online renewal of his Family Planning Services. The agency processed the renewal and confirmed Family Planning benefits.
8. On August 19, 2013, the agency issued a Notice of Decision to the Petitioner at [REDACTED], [REDACTED] notifying him that his FS benefits would end on September 1, 2013 for failure to complete the six month renewal. The notice informed the Petitioner that if the six month report form was not completed and returned with all needed proof by the end of the month, FS benefits would end.
9. The Petitioner did not complete the six month renewal form. The agency ended the Petitioner's FS benefits effective September 1, 2013.
10. On October 15, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

FS units certified for 12 months, and subject to reduced change-reporting requirements, are required to submit a six-month report form (SMRF) in the sixth month of the certification period. FS benefits are generally certified for six months and the recertification process may be done in person or by other means, including mail, 7 CFR §273.14(b)(3).

Using the SMRF, these food units are required to report and verify the current gross earned income received by all household members. See FoodShare Handbook § 6.1.2. This provision was enacted by Section 4109 of the federal 2002 Farm Bill, which allowed the Department to modify its change reporting requirements. In July, 2003, the Department of Health and Family Services issued an Operations Memo making that reporting requirement effective July 27, 2003. Operations Memo, 03-42, issued July 11, 2003.

In a Fair Hearing concerning the propriety of a discontinuance or reduction of benefits, such as this, the agency has the burden of proof to establish that the action taken by it was proper. The Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the discontinuance action was required.

The agency erred in sending notices regarding the FS renewal to Petitioner's old address, despite the fact that he submitted an updated address in the March, 2013 application. However, the agency properly issued the August 19, 2013 Notice of Decision to the Petitioner at his correct address informing him of the need to complete the renewal by the end of August in order to continue to receive benefits. The Petitioner testified that he believed he had submitted a FS renewal on August 15, 2013. Unfortunately, the renewal application only reflects that he requested renewal of Family Planning and not FS. Therefore, when the FS renewal was not completed by the end of August, the agency properly terminated the Petitioner's FS benefits effective September 1, 2013.

CONCLUSIONS OF LAW

The agency properly terminated the Petitioner's FS benefits effective September 1, 2013.

THEREFORE, it is

ORDERED

That the petition be, and hereby 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, 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 Milwaukee,
Wisconsin, this 6th day of December, 2013

\sDebra Bursinger
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.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability