



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/153154

PRELIMINARY RECITALS

Pursuant to a petition filed October 29, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regards to the sufficiency of the petitioner's FoodShare benefits (FS), a telephone hearing was held on November 20, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly determined the sufficiency of the petitioner's FS allotments, effective August - November, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Jose Silvestre, 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. She is the casehead of a 2 person household composed of herself and a minor child. She received a net of \$6 per month of FS in each of the months of August - November, 2013, after a \$10 recoupment was applied in each month.
2. On July 30, 2013, the county agency issued a Notice of Decision to the petitioner informing her that effective August 1, 2013, she would continue receiving \$6 of FS.

3. The petitioner has been paying dependent care expenses in the form of a co-pay of \$120 every two weeks, so that she can work. It does not appear that the agency allowed any dependent care expense in any of the FS budgets for the period of August – November, 2013.
4. The petitioner filed an appeal with the Division of Hearings & Appeals on October 29, 2013, contesting the sufficiency of her FS, without specifying a month.
5. The copay amount the petitioner pays for child care benefits was determined by the child care unit of the Milwaukee County agency and was a fact reported to and known by the Department of Children and Families, an agent of the State of Wisconsin.

DISCUSSION

The county agency was aware of the petitioner's child care copay obligation as a matter of record, as an agent of the State of Wisconsin. The copay sum, testified to be \$120 every two weeks, would definitely affect the petitioner's FS eligibility, in all likelihood entitling her to more FS. I erred in limiting this issue at the hearing to November, 2013, and continuing forward. She did not specify the benefit month she was appealing in her appeal letter, and her appeal was on the 89th day after the effective date of the Notice of July 30, 2013.

The petitioner has been caused loss of FS in the period of August – November, 2013, as the consequence of agency error, and the error must be review and corrected. See, 7 C.F.R. §273.17(a)1; see also, 7 C.F.R. § 273.17(b). The error was not adding the childcare copay expense as a dependent care deduction even when that information was in possession of agents of the State of Wisconsin, i.e., the child care unit and the income maintenance unit of the MILes agency. At a minimum, verification should have been requested, if not outright direct verification between the two public assistance governmental units.

This matter will be remanded to the agency to immediately issue a written verification request for proof of payment of childcare copays (August – November, 2013) from the petitioner giving her 10 days to do so; and if timely submitted, to review and re-determine her eligibility for FS for the entire period of August – November, 2013, and to issue all supplement FS to which she is entitled after offset for recoupments at the 10% rate.

The petitioner must submit the verification timely, or in the alternative form, her appeal will be dismissed in its entirety without further action. She would be well-advised to do so immediately, and retain a date-stamped copy.

CONCLUSIONS OF LAW

That the Department has incorrectly determined the sufficiency of the petitioner's FS in the period of August – November, 201; and the matter must be remanded for verification, review & redetermination and supplementation of benefits.

THEREFORE, it is

ORDERED

That the matter is remanded to the Department and its agents with instructions to: immediately issue a written verification request to the petitioner for proof payments of childcare copayments in the period of August – November, 2013, to be provided within 10 days of the verification request date; if timely submitted, review and re-determine the petitioner's eligibility for FS for the period of August – November, 2013; and issue all supplemental FS to which she was otherwise entitled, if any, after offset for 10% recoupments. These actions shall be completed within 10 days of the date of verification of the copayments made. **IT IS FURTHER ORDERED**, that *if* the petitioner fails to timely verify her copayments made, *then* in the alternative, her appeal is dismissed in its entirety.

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 21st 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

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 21, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability