



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/154017

PRELIMINARY RECITALS

Pursuant to a petition filed December 07, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Barron County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 19, 2013, at Barron, Wisconsin.

The issue for determination is whether the petitioner can receive additional FoodShare in December 2013 if she did not report that her income had fallen until December 2, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Candi Gillette

Barron County Department of Human Services
Courthouse Room 338
330 E LaSalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of Barron County.
2. The petitioner was an ongoing FoodShare recipient who was injured at work on November 18, 2013.

3. The petitioner reported to the agency on December 2, 2013, that she was off from work.
4. The county agency denied the petitioner's request that she receive additional FoodShare because of her reduced income in December 2013. It increased her benefits as of January 2014.

DISCUSSION

FoodShare rules hold that “[a]ll reported changes that cause an increase in the FS benefit...will be effective the first of the month following the report month.” *FoodShare Wisconsin Handbook*, § 6.1.3.3.; see also, 7 CFR 273.12(c)(1). The petitioner was injured at work on November 18, 2013. She testified that she did not find out until November 26, 2013, that would not be able to return to work quickly. She tried to call the county agency on November 28, the day after Thanksgiving, but the entire Northern Consortia was closed. She called on December 2, 2013, to report the change. She seeks benefits for December, contending that the agency made it impossible for her to report her benefits in November. The agency refused to supplement her benefits until January 2014 because that was the month after she reported the change.

I sympathize with the petitioner but have no power to grant her request. Administrative law judges lack equitable powers that would allow them to consider the fairness of the situation. Rather, they must apply the law as it is written. FoodShare rules do not allow additional benefits until the month after the recipient reports a change in income. Moreover, although the agency was closed, the petitioner had other options. She could have left a message or reported the change online. Therefore, although I understand why the petitioner believes she is entitled to an additional month of increased FoodShare, I have no power to grant her request.

CONCLUSIONS OF LAW

The petitioner is not entitled to additional FoodShare in December 2013 because she reported the change in her income that month.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 Madison,
Wisconsin, this 14th day of January, 2014

\sMichael D. O'Brien
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 January 14, 2014.

Barron County Department of Human Services
Division of Health Care Access and Accountability