FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOO/154378

PRELIMINARY RECITALS

Pursuant to a petition filed December 20, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Eau Claire County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 22, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the county agency correctly refused to supplement the petitioner's December 2013 FoodShare benefits because he failed to verify his rent.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Sheila Morden
Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [redacted]) is a resident of Eau Claire County.
2. On November 27, 2013, the county agency requested the petitioner to verify his rent by December 9, 2013. When he failed to do so, the agency issued a $21 FoodShare payment to him

on December 9, 2013. This payment did not consider his rent when determining his shelter expenses.

3. The petitioner verified his rent on December 19, 2013, and the agency supplemented his January 2014 FoodShare allotment by $118.

4. The petitioner no longer used the Post Office box the county agency had been sending his notices to. He had not notified the agency of any change in his address before December 2013.

5. The petitioner has not intentionally failed to verify his rent.

DISCUSSION

FoodShare benefits depend upon a household's size and income. To ensure that eligibility decisions are based are accurate information, recipients must verify certain information, including income. 7 CFR § 273(f)(1)(i). Agencies must deny benefits to those who refuse to cooperate with completing the application process; this process includes verification. However, "[f]or a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency shall provide assistance required by paragraph (c)(5) of this section." 7 CFR § 273.2(d)(1) (d). "The local agency must assist the applicant in obtaining this verification providing the applicant has not refused to cooperate with the application process." *FoodShare Wisconsin Handbook,* § 1.2.1.3.

One of the deductions from gross income the petitioner could receive was the shelter deduction, which is determined according to a complex formula that takes a number of factors into account, including rent. The county agency sent a written notice to the petitioner's Post Office box on November 27, 2013, requesting that he verify his rent by December 9, 2013. When he failed to do so, it sent him a reduced FoodShare payment of $21 on that date. After speaking with a worker a week and half later, he verified his rent, and the agency supplemented his January 2014 FoodShare allotment by $118. He requests that the agency also supplement his December 2013 allotment. The agency denied his request because it contends that he failed to cooperate in determining his rent.

I cannot fault the agency. The petitioner submitted his six-month reporting form a month and half late and then did not verify his rent. He did not return a call from a Chippewa County worker. From the agency's perspective, this appeared to be someone who refused to cooperate. Still, when viewed from the perspective provided at the hearing, the petitioner's actions seemed to be more negligence than a willful refusal to cooperate. He pointed out that he did not receive the notice because he no longer uses his Post Office box. When the Chippewa County worker called, he did not return the call because he lives in Eau Claire County and assumed it was made in error. The error was his because workers now handle matters outside of their own counties. He also has a responsibility to notify the agency or any change of address. On the other hand, he did appear organized at the hearing, and in December when he found out the agency needed verification of his rent, he provided it immediately. From this, I find that the agency's inability to verify his rent was his fault, but that, despite his errors, he has not refused to cooperate. As a result, I find that his rent must be considered when determining his December FoodShare allotment and that he is entitled to a supplement for that month.

CONCLUSIONS OF LAW

The petitioner is entitled to have his December 2013 FoodShare allotment supplemented because he did not refuse to verify his rent.

THEREFORE, it is **ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision, it redetermine the petitioner's FoodShare allotment for December 2013 and issue him a supplement for that month. When doing so, it shall allow him a shelter deduction that accounts for his rent.

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 January, 2014

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\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 29, 2014.

Eau Claire County Department of Human Services
Division of Health Care Access and Accountability