



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/154379

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 20, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Portage County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 23, 2014, by telephone.

The issue for determination is whether the petitioner failed to timely submit a signature page for her November 2013 FS renewal.

There appeared at that time 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: Mandy Mayek, F&SS Supr.  
Portage County Department of Human Services  
817 Whiting Avenue  
Stevens Point, WI 54481-5292

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County.
2. The petitioner has an ongoing FS case for a household of one person. Her case was due for a periodic renewal in November 2013. The petitioner performed her telephonic renewal interview

on November 18, 2013. A signature page was sent to her on November 19, 2013, with instructions to return the same by November 29, 2013.

3. The petitioner mailed a signed signature page back to the agency on November 21, 2013.
4. The agency has no record of the page signed and mailed on November 21, 2013.
5. The petitioner telephoned the Department's Call Center on December 12 to inquire as to the status of her FS case. She asked that a new signature page be sent to her; this was done. The petitioner returned the second signature page (signed), on December 13, 2013.
6. The agency reopened the petitioner's FS benefits effective December 13, 2013. This resulted in a prorated FS allotment for December of \$56.00. The petitioner received a full allotment of \$91.00 effective January 1, 2014.

### **DISCUSSION**

An agency and FS recipient must perform a periodic review of eligibility during specific time intervals (e.g., 12 months in many cases) as a condition of ongoing FS issuance to the recipient. 7 C.F.R. 273.14.(a); *FS Wisconsin Handbook (FSWH)*, 2.2.1(viewable online at <http://www.emhandbooks.wi.gov/fsh/>). Where the review interview is conducted by phone, the agency sends a copy of the interview information and a signature page to the recipient. That was correctly done here. The recipient is then responsible for signing that page and timely returning it to the Department.

These requirements are not disputed here. The petitioner testified that she timely returned the signature page on November 21, 2013. She made a copy of her signature page and has submitted it into this hearing record as Exhibit 4. The agency has no record of receiving the November 21 signature page. Because the agency believes that it did not receive the signature page, no FS were initially issued to the petitioner for December. This prompted her to call the Department's Call Center on December 12. The result of that call was that the Department mailed her a second signature page. She immediately signed that page and filed it with the Department, causing her benefits to begin effective December 13.

The only reason to disbelieve the petitioner's testimony that she returned the page on November 21 was the Department's worker Case Comments for December 12. In the Comments, the Call Center worker asserts that the petitioner said that she had mailed her signature page in on December 6 (late). This is not the petitioner's recollection of the conversation. The Call Center worker is not from Portage County, and was therefore not available to testify. If a worker from Portage County had taken the December 12 call and testified to the information in the Case Comments, I would have upheld the agency action. However, the best evidence in this hearing record is the petitioner's version of events. Therefore, I will direct the agency to issue the missing FS benefits to the petitioner for the December 1-12, 2013, period.

### **CONCLUSIONS OF LAW**

1. The petitioner timely submitted her renewal signature page on November 21, 2013, so proration of her December 2013 benefits was incorrect.
2. The agency must issue FS benefits to the petitioner for the December 1 – 12, 2013 period.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the county agency with instructions to determine and issue FS benefits to the petitioner for the December 1 – 12, 2013, period. This action shall be taken 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 24th day of January, 2014

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\sNancy J. Gagnon  
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 24, 2014.

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