



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/154660

PRELIMINARY RECITALS

Pursuant to a petition filed January 10, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on February 05, 2014, at Green Bay, Wisconsin.

The issue for determination is whether petitioner is eligible for FS benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney J Scott Schnurer
201 W Walnut St Suite 203
Green Bay, WI 54303

Respondent:

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

By: Shelly Quick
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Brown County who emigrated from Somalia. Her entry date is August 13, 2010.
2. Petitioner has lived in the US as a refugee since August 13, 2010.

3. Petitioner's FS application was denied, as to petitioner, pursuant to notice dated November 29, 2013. The county agency denied her application because it determined that she was not a US citizen and/or a qualified alien.
4. January 10, 2014, petitioner filed an appeal with the Division of Hearings and Appeals.
5. Petitioner possesses a U.S. Permanent Resident Card; the card indicates "RE6" under the "Category" designation. Exhibit R-2.

DISCUSSION

The FoodShare Eligibility Handbook (FEH) provides directives to county agencies which set forth the agency and client responsibilities when processing an FS application or review. In order to be eligible for FS benefits, an applicant must be a US citizen and/or a qualified alien. The FS Handbook indicates the following guidelines with respect to citizenship and immigration status:

3.12.1 Citizenship and Immigration Status

To meet the citizenship or qualifying alien requirement for FS, a person must be one of the following:

1. A citizen of the US which is defined as a person:
 - a. who was born in the US. Geographically, the US is the continental US, Alaska, Hawaii, Puerto Rico, US Virgin Islands, and Northern Mariana Islands, including Guam, or
 - b. who is a naturalized citizen of the US
2. A person born outside of the U.S. to, or adopted by, at least one U.S. citizen. They are sometimes referred to as a "derivative citizen."
3. A non-citizen with a qualifying immigration status.

In this case, the negative action was the county agency's determination that petitioner was ineligible to receive FS benefits because it determined that she was not a US citizen and/or a qualified alien. The county agency's position was explained to the petitioner in a letter dated December 11, 2013. The agency wrote:

...When your immigration status was verified, I was informed you were a "lawful permanent resident – employment authorized." This verification is from the immigration system that issued your resident card. If you were listed as a refugee like your message stated, this message would have indicated that. As a legal resident, you must have resided here for 5 years before you can qualify for assistance. ...

Exhibit R-3.

Petitioner testified that she emigrated from Somalia in 2010, and that her I-94 identifies here as a refugee. Petitioner's testimony was corroborated by a letter from Catholic Charities, Migration, and Refugee Services, which indicates that the petitioner has received assistance from that organization as a refugee, in accordance with her I-94 status. Exhibit P-3. Petitioner also presented provisions from a CARES Procedures, Alien Eligibility Self-Study Guide (vers. 2), from the Department of Workforce Development, DES Training Section. This Guide specifically references petitioner's "RE6" code and relates that to "Refugee Lawfully Present under Section 207."

The respondent notes that it attempted to verify the information provided by the Alien Eligibility Self-Study Guide presented by the petitioner. It was unable to do so, and as such, relied upon the information that it could verify, i.e., the immigration system reported that petitioner was a lawful permanent resident.

While I cannot fault the respondent for reaching the conclusion that it did, denying petitioner's FS eligibility, I conclude that the petitioner has presented sufficient evidence of her refugee status to merit approval of her FS eligibility. Specifically, the respondent was unable to counter or provide an alternative explanation for the "RE6" Category code on petitioner's Permanent Resident card; the respondent provided information defining that code in reference to refugees. Catholic Charities' correspondence corroborated the petitioner's evidence. Therefore, I will remand this matter to the respondent to review and re-determine petitioner's FS eligibility as of November 5, 2013.

CONCLUSIONS OF LAW

Petitioner is eligible for FS benefits effective November 5, 2013, as she is a refugee lawfully present under Section 207, pursuant to FEH § 3.12.1.1.

NOW, THEREFORE, it is ORDERED

That the matter be remanded to the county agency with instructions to re-determine petitioner's FS benefits effective November 5, 2013, as a refugee lawfully present under Section 207. The respondent shall issue a notice to petitioner regarding same. All actions required by this Order shall be completed within 10 days following issuance 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 18th day of March, 2014

\sPeter McCombs
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 March 18, 2014.

Brown County Human Services
Division of Health Care Access and Accountability
Attorney J Scott Schnurer