



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/154681

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 13, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Calumet County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 20, 2014, by telephone.

The issue for determination is whether the amount of the petitioner’s FS allotment for January 2014 was correctly determined.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
By: [REDACTED], daughter  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Jennifer Schmidkofer, ES Spec.  
Calumet County Department of Human Services  
206 Court Street  
Chilton, WI 53014-1198

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Calumet County.
2. The petitioner has an ongoing FS case, for which a periodic case review was due by December 31, 2013. The review paperwork was submitted to the Department on December 26, 2013. On

December 18, 2013, the Department issued written notice to the petitioner advising that the FS case would close effective December 31, 2013, because the review process was not yet complete (verification missing). See, Exhibit 1, notice.

3. On December 27, 2013, the Department issued a written verification request to the petitioner, with a due date for submission of January 6, 2014. The needed verification was to establish earned income received by a household member from ██████████ ██████████ ██████████ Inc. Examples of acceptable verification were listed as being “paystubs from the last 30 days; enclosed Employer Verification of Earnings Form filled out and signed by your employer; or Statement from your employer with the same information.” See, Exhibit 2.
4. On January 7, 2014, the Department mailed written notice to the petitioner advising that the FS case remained closed effective December 31, 2014, because requested verification had not been received.
5. The ██████████ earnings are directly deposited to a household banking account, so recent paystubs were not immediately available to the household. The household submitted banking account statements, showing the wage deposits, to the local agency on Friday, January 3. On January 9, 2014, the petitioner’s daughter had a telephone conversation with an agency worker, in which she was advised that the bank account statements were not adequate verification. Satisfactory verification was then submitted to the agency by the petitioner on January 9, 2014.
6. The agency reopened the petitioner’s FS case effective January 9, 2014. On January 13, 2014, the department issued written notice to the petitioner advising that the FS case would reopen effective January 9, 2014, with a prorated allotment of \$112 for January (*i.e.*, no benefits for the January 1-8 period). It further indicated that a full allotment of \$152 would be issued for February 2014 onward. The agency relied on *FS Wisconsin Handbook*, § 1.2.1.2 as authority for the January proration.

### DISCUSSION

An agency must request verification of earned income. *FS Wisconsin Handbook (Handbook)*, §§1.2.4.1-1.2.4.3, at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm> . The agency must give the client at least 10 days (or the balance of the 30 day application processing period) to supply requested verification. *Handbook*, §1.2.1.2. The responsibility for supplying verification then rests on the recipient. *Id.*, §1.2.1.3. When requested income verification is not timely received, the agency may correctly deny an application or close a case undergoing review. *Id.*, §1.2.4.1; 7 C.F.R. §273.2(g)(3).

Noting that the recipient has the primary responsibility for providing documentation, I also note that the federal rule requires the agency to “assist the household in obtaining this verification *provided the household is cooperating with the State agency ...*” 273.2(f)5. See also, *FSWH*, § 1.2.1.3. In this case, I believe that the household was cooperating with the income verification request by submitting the bank statements which showed the paycheck direct deposits. The petitioner’s daughter credibly explained that paystubs were not immediately available, and that English is not the petitioner’s primary language. I agree with the agency that the bank statements were not sufficient verification, which is why the agency continued to insist on stubs or an employer statement. If the petitioner had not produced the acceptable verification on January 9, I would have upheld the case closure until such time as adequate verification was submitted. However, I believe that this cooperating household acted in a prompt fashion by providing the needed verification on the same day that it understood what was needed, via a telephone conversation with the agency. Based on the combination of the timely filing of some documentation and the prompt action taken after the clarification, I do not believe that the case should have remained closed from January 1 – 8, 2014, and I will order issuance of the FS for that period.

This case differs from one in which a recipient submits no verification by the deadline, and calls the agency for clarification in the month following the closure date for clarification. Such a household is not “cooperating,” and therefore requires no further assistance from the agency, and is subject to the proration penalty if a new application or the verification is later filed.

### **CONCLUSIONS OF LAW**

1. The petitioner was cooperating with the agency’s verification request, and proration of her benefits for January 2014 was therefore incorrect.

**THEREFORE, it is**

**ORDERED**

That the petition is *remanded* to the agency with instructions to issue FS to the petitioner for the January 1 – 8, 2014 period, 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 12th day of March, 2014

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\sNancy J. Gagnon  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 12, 2014.

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