



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/154796

PRELIMINARY RECITALS

Pursuant to a petition filed January 15, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services (MES) in regard to FoodShare benefits (FS), a telephonic hearing was held on February 12, 2014, at Milwaukee, Wisconsin. At the request of the parties, the record was held open until February 19, 2014 for petitioner to submit verification of her wages (for December, 2013 through February, 2014) to MES, and then until March 3, 2014 for MES to review that verification and issue an updated notice of decision and any supplemental FS benefits to which she may be entitled retroactive to December 1, 2013.

The issue for determination is whether Milwaukee Enrollment Services Center (MES) met its burden of proof to establish that it properly and timely discontinued the petitioner's FS benefits effective December 1, 2013.

There appeared at that time and place 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: Katherine May, HSPC senior
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resides in a household of one.
2. The petitioner applied for FoodShare (FS) benefits on or about November 5, 2013, and was approved for FS benefits for a household of one.
3. Petitioner was employed as a cashier and waitress at [REDACTED]'s [REDACTED].
4. Milwaukee Enrollment Services (MES) sent a November 6, 2013 Verification Request to the petitioner requesting verification by December 5, 2013 of her employment and income at [REDACTED]'s [REDACTED]. Petitioner did not timely submit her verification to MES. See Exhibit 2.
5. MES failed to send any proper and timely Notice of Decision to the petitioner regarding her lack of verification, but instead just discontinued the petitioner's FS benefits as of December 1, 2013.
6. The petitioner did not receive timely and adequate notice of the December 1, 2013 discontinuance of her FS benefits.

DISCUSSION

During the February 12, 2014 hearing, the MES representative agreed that MES did not provide any timely or adequate notice to the petitioner of the December 1, 2013 discontinuance of her FS benefits. See Findings of Fact #4 - #6. As a result, the hearing record indicates that MES did not properly discontinue the petitioner's FS effective December 1, 2013 due to not timely providing verification of her employment and income at [REDACTED]'s [REDACTED]. Furthermore, petitioner alleged that she was fired at [REDACTED]'s [REDACTED], and then re-hired on or about February 19, 2014 so her income changed during the period in question.

In any discontinuance of benefits, the county agency has the burden of proof to establish that it correctly and properly discontinued the recipient's FS benefits. Both parties agreed that the case should be remanded to the parties for additional review and re-calculation. The record was held open until February 19, 2014 for petitioner to submit verification of her wages (for December, 2013 through February, 2014) to MES, and then until March 3, 2014 for MES to review that verification, and issue an updated notice and any supplemental FS benefits to which she may be entitled retroactive to December 1, 2013. Accordingly, for the above reasons, Milwaukee Enrollment Services Center (MES) failed to meet its burden of proof to establish that it properly and timely discontinued the petitioner's FS benefits effective December 1, 2013.

CONCLUSIONS OF LAW

1. Milwaukee Enrollment Services did not meet its burden of proof to establish a prima facie case that it met its burden of proof to establish that it properly and timely discontinued the petitioner's FS benefits effective December 1, 2013.
2. Based upon petitioner's verification of her employment income (see Preliminary Recitals), Milwaukee Enrollment Services needs to re-calculate petitioner's FS household income for a household of one retroactive to the December 1, 2013 FS discontinuance date, and issue to the petitioner an updated notice of decision and any FS benefits to which she may have been entitled retroactive to December 1, 2013.

THEREFORE, it is

ORDERED

The matter is remanded to petitioner and to Milwaukee Enrollment Services with the following instructions: a) **By February 19, 2014**, petitioner should submit verification of her wages (for December, 2013 through February, 2014) to MES, and b) **By March 3, 2014**, MES should review that verification from petitioner and issue an updated notice of decision and any supplemental FS benefits to which she may be entitled retroactive to December 1, 2013, 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 11th day of March, 2014

\sGary M. Wolkstein
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 11, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability