



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/155088

PRELIMINARY RECITALS

Pursuant to a petition filed January 25, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dunn County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 20, 2014, at Menomonie, Wisconsin.

The issue for determination is whether the county agency correctly delayed an increase in her FoodShare allotment because of when she verified her income.

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: Paula Goodell
Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.
2. The petitioner reported on November 5, 2013, that she had begun working at [REDACTED].

3. On November 12, 2013, [REDACTED] [REDACTED] submitted verification indicating that the petitioner was working 8-12 hours a week and earning \$7.25 per hour. In response, the agency reduced her FoodShare to \$15 per month, beginning in December 2013.
4. The petitioner reported to the agency on November 20, 2013, that [REDACTED] [REDACTED] overstated her income. She brought her November 2013 paystubs to the county agency to verify this.
5. The agency did not increase the petitioner's FoodShare allotment based upon her claim that her income had been overstated until January 2014 because it contends that she did not submit her information until December 3, 2013.
6. The county agency submitted no evidence that it requested in writing that the petitioner verify her income.

DISCUSSION

The size of a FoodShare allotment depends upon net income and household size. When the petitioner began working in November 2013, she reported this to the agency. The agency, relying upon information provided by the employer, reduced her FoodShare allotment to \$15 per month. She contacted the agency on November 20, 2013, to state that her income was less than her employer represented to the agency. She then submitted her pay stubs to support her claim. FoodShare rules hold: "All reported changes that cause an increase in the FS benefit ... will be effective the first of the month following the report month if required verifications are received within 10 days of the request for verification." *FoodShare Wisconsin Handbook*, § 6.1.3.3.; see also 7 CFR § 273.12(c)(1). The county agency determined that the petitioner was not entitled to additional FoodShare until January because it did not receive her pay stubs until December 3, 2013. The petitioner testified that she believes she submitted the stubs in November 2013.

The reason there is a question over when the petitioner submitted the verification is that the agency did not date-stamp the paystubs before faxing them to the Central Data Processing Unit. The CDPU received the documents on the December 3, 2013, but this does not prove that the agency worker sent them the same day as she received them. After the hearing, the agency submitted an email stating that the worker claims she faxed the verifications the same day she received them. This is hearsay, and there is no way to determine its reliability. Therefore, I give it no weight in making my determination and accept the petitioner's testimony that she submitted the documentation in November 2013.

Moreover, the outcome does not depend solely upon the petitioner's statement. Any increase in her FoodShare depends first upon when she reported the decrease in income, which she did in November. This means that she is eligible for an increase in December as long as she verified this within 10 days of a proper request that she do so. It is up to the agency to establish that it made a proper request and when it made it. Requests to verify a change of income must be made in the same manner as requests for verification made at the time of application. 7 CFR § 273.2(f)(8)ii. Requests for verification made at the time of application must be in writing. 7 CFR § 273.2(c)(5). The county agency presented no evidence that it made any written request for verification. Nor did it provide any evidence as to when it requested the verification. Thus, it has demonstrated that the petitioner did not respond in time to the verification request. As a result, she was eligible for any increase due to her as of December 2013.

I note that federal rules make it clear that an increase in the FoodShare allotment can go into effect before the agency receives verification. Those rules require the state agency to "advise the household of additional verification requirements, if any, and state that failure to provide verification shall result in increased benefits reverting to the original allotment." 7 CFR § 273.12(c). An allotment cannot revert to the original amount if it has not already increased before the verification was received. If the eventual verification indicates that the recipient misstated the change of income, and as a result received more benefits than she was entitled to, the agency can bring an overpayment action against her.

I also note that the county agency did not submit any exhibits before the hearing. It can (and should) do this online. Workers at the Madison office of the Division of Hearings and Appeals can assist agency workers with any submission if they are unfamiliar with the process.

CONCLUSIONS OF LAW

The petitioner is entitled to have her December 2013 FoodShare allotment based upon her November 2013 income because she reported that income to the agency in November and there insufficient evidence that she submitted her verification of that income after it was due.

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 December 2013 FoodShare allotment using the November 2012 paystubs determine her income.

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 3rd day of March, 2014

\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 March 3, 2014.

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