



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/155649

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 18, 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 March 13, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (MES) correctly discontinued the petitioner's FoodShare (FS) benefits effective February 1, 2014, due to a late FS review, and prorated her FS re-application from February 11, 2014, when she completed her new re-application.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Jose Silvestre, Jr., IM advanced worker  
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 # ) is a resident of Milwaukee County who receives FoodShare (FS) benefits for a household of six.

2. Milwaukee Enrollment Services (MES) sent a December 16, 2013 “45 day” notice to the petitioner stating that petitioner must complete her review by January 31, 2014 or her FS benefits would discontinue. See Exhibit 2. The petitioner received Exhibit 2.
3. Milwaukee Enrollment Services (MES) sent a January 17, 2014 notice to the petitioner indicating that her FS benefits would discontinue effective February 1, 2014, if petitioner did not complete her FS review by January 31, 2014 due to a late review. See Exhibit 3. The petitioner received Exhibit 3.
4. The petitioner did not complete her FS renewal application by the end of January, 2014.
5. On February 11, 2014, petitioner contacted MES, re-applied for FS benefits and completed her FS re-application process. The county re-opened petitioner’s FS benefits as of February 11, 2014, and approved pro-rated FS of \$214 for the period of February 11, 2014 through February 28, 2014. See Exhibit 1. For March, 2014, petitioner received FS benefits of \$334.00.

### DISCUSSION

When a review is not completed by the end of a certification period, FS are terminated. 7 C.F.R. §§ 273.10(f) and 273.14(a); Income Maintenance Manual, I-B-1.0.0. There are two possible results, depending on whether the failure is caused by the agency. FS reviews are required to be conducted every 12 months. *FoodShare Eligibility Handbook*, 2.2.1.

If the review is not completed due to an agency error, such as failing to schedule the review or sending a notice to an incorrect address, FS are to be issued immediately after the review is completed, and they are not prorated. 7 C.F.R. §273.14(e)(1). If the review is not completed because of household error or inaction, the FS are not issued in full. Instead the case is treated as **a new application, and benefits are to be prorated**. See 7 U.S.C. 2017(c)(2). That is a change in the law; under the old law the person would receive his or her full month’s FS as long as s/he completed the review within the 30 days after the termination. See 7 C.F.R. §273.14(e)(2). In a new application, the first day of benefits is the date that the FS application is filed. 7 C.F.R. §273.10(a)(1)(ii).

In the instant case, petitioner’s FS review application was not timely completed by the end of January, 2014, despite notices sent to the petitioner and received by the petitioner. See Exhibits 2 and 3. During the March 13, 2014 hearing, petitioner admitted receiving Exhibits 2 and 3. The petitioner alleged, without any documentation, that she was told by some unidentified ESS worker that she could wait until the end of February, 2014 to complete her review. However, she was unable to provide any reliable evidence of such allegation.

The hearing record indicates that petitioner did not contact MES prior to February 11, 2013 when she contacted MES to re-apply for FS benefits. On that same date, petitioner completed a new FS application interview, and was approved for pro-rated FS benefits as of February 11, 2014 for a household of six. Accordingly, based upon the above, I conclude that MES correctly discontinued petitioner’s FS effective February 1, 2014, and correctly re-opened her pro-rated FS as of February 11, 2014, because she failed to establish any good cause for not completing her mandatory review by January 31, 2014.

### CONCLUSIONS OF LAW

1. Milwaukee Enrollment Services (MES) correctly discontinued petitioner’s FS benefits effective February 1, 2014 because petitioner failed to timely complete her required FS review application and did not establish any good cause for her late review.

2. MES correctly re-opened petitioner's FS benefits as of February 11, 2014 when petitioner completed her new re-application, and correctly prorated her February, 2014 FS benefits from February 11, 2014 to February 28, 2014.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby Dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 7th day of April, 2014

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\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 April 7, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability