



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/155732

PRELIMINARY RECITALS

Pursuant to a petition filed February 24, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 19, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in its reduced February 2014 FS allotment to petitioner.

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: Thao Xiong
Milwaukee Enrollment Services
1220 W Vliet [REDACTED] Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On November 18, 2013, the agency sent notice to petitioner informing her that a six month report form (SMRF) would need to be completed in about 30 days.

3. On December 23, 2013, the agency sent a blank SMRF to petitioner to be completed and returned by January 5, 2014 to maintain continuing and uninterrupted benefits. The mailing also included options on how to complete the SMRF online.
4. On January 17, 2014 a notice was sent to petitioner informing her that her FS would end effective February 1, 2014 due to failure to complete the SMRF.
5. All notices were sent to [REDACTED] in Milwaukee which was the address on file with the agency in the FS case.
6. On February 14, 2014, petitioner contacted the agency and the agency reinstated benefits as of that date; thus, she received only a partial allotment for February.
7. Petitioner filed a request for hearing on 2/24/14.

DISCUSSION

No FS household may participate beyond the expiration of the FS certification period without a determination of eligibility for a new period. 7 C.F.R. § 273.14(a); FoodShare Wisconsin Handbook ["FWH"] 2.2.1. **The only exception is if there is delay through the fault of the State agency.** 7 C.F.R. § 273.14(e)(3).

Food units certified for 12 months, and subject to reduced change reporting requirements, are required to submit a SMRF in the 6th month of the certification period. If the FS household fails to return a SMRF FS will close. FWH 6.1.2.

In this case, the notices were mailed to the [REDACTED] address as reflected in ex. #1. Petitioner argued at hearing that she did not get the notices. She explained that the mail sometimes does not get to her as the people in another apartment get her mail and deliver it to her unit. Petitioner also explained that on a visit to the agency she was told that her review was due in February. But, this visit to the agency was on January 27, 2014. Even if petitioner was given incorrect information, she still had missed the SMRF deadline by 22 days. Furthermore, the notices were all sent to the correct address on file with the agency. The agency did not err in any way. Petitioner's statement regarding her mail does not rebut the presumption of receipt as the three notices were all mailed to the correct address. I find it hard to believe that petitioner did not receive any of the notices. Petitioner said that she hardly receives any of her mail. If her mail is that unreliable, then it is not the fault of the agency that she did not receive them. It would behoove petitioner to get a PO box or other mail delivery arrangement.

CONCLUSIONS OF LAW

1. The agency did not err in its termination of the FS case due to failure to complete the review.
2. The agency did not err in its reinstatement of FS on the date that petitioner finally provided the required information on February 14, 2014.

THEREFORE, it is

ORDERED

That this appeal is 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 21st day of April, 2014

\sJohn P. Tedesco
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 21, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability