



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/156044

PRELIMINARY RECITALS

Pursuant to a petition filed March 12, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on April 28, 2014, at Wausau, Wisconsin.

The issue for determination is whether the agency should restore petitioner's transitional FS.

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: Mai Kou Yang

Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner was enrolled in the transitional FS program receiving \$497 allotment.
3. Petitioner underwent a BC+ review and also checked the box for FS on her Access renewal. This was an unintentional error.

4. The agency recertified FS for petitioner, thus removing her from the TFS program and reducing her allotment to \$125.
5. Petitioner appealed.

DISCUSSION

Transitional FoodShare (TFS) benefits automatically extend FS benefit eligibility for 5 months to food units whose Wisconsin Works (W-2) or Tribal (TANF)(TT) cash assistance ends as long as:

1. the member was part of an active FS case in the benefit month and the month the last W-2 or TT payment was issued, and
2. the member was receiving a W-2 or Tribal TANF payment. This does not include W-2 Trial Job Placements or Transitional Jobs case managed by a W-2 agency.

See *FoodShare Wisconsin Handbook*, §5.1.1.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. The agency in this case granted TFS benefits to petitioner. Shortly after, petitioner underwent a renewal with the agency for BC+ and also apparently checked the box for FS program benefits. Based on the record at hearing, this was an error on the part of petitioner. The effect of this renewal of FS was to request a recertification and remove petitioner from the TFS program which was providing her with \$497 in FS per month for the five months and reduce her to a regular FS program allotment of \$125. This effectively did away with the greater FS that is intended to assist a person in their transition from the W-2 program. The agency could not explain why a person would seek to do this. The agency also stated that no one from the agency attempted to contact petitioner to explain that this bizarre result would come from her completing the renewal.

While the agency's action in this case may be in conformance with a rule, it is an absurd result. The agency could not hazard a guess why a person would intentionally forego the \$497 in TFS in order to recertify and get 25 percent of the benefits. I cannot either. No one from the agency even questioned this. They are not required to do so. But, if the agency must at least concede that this looks like the petitioner probably made a simple mistake. To not reverse the action would be a hypertechnical application of the rules at the expense of a person who is clearly eligible for the benefits she is seeking to restore.

CONCLUSIONS OF LAW

The agency should restore TFS to petitioner because her checking the box on the Access application with regard to FS was a simple error.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and its county agent with instructions to reverse the recertification and restore the TFS program benefits retroactive to the time of the change/reduction. The agency should also issue any appropriate FS supplement to ensure that she receives the full TFS amount retroactive to the time of the change/reduction. These actions must occur within 10 days of this decision.

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 2nd day of May, 2014

\sJohn P. Tedesco
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 2, 2014.

Marathon County Department of Social Services
Division of Health Care Access and Accountability