



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/156256

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 21, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Oneida County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on April 28, 2014. The record was held open to allow the respondent to submit further documentation, which was timely received.

The issue for determination is whether the county agency expunged the petitioner's FoodShare benefits when she did not use them within one year.

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: Amy Mayo

Oneida County Department of Social Services  
Oneida Avenue  
PO Box 400  
Rhinelander, WI 54501

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Oneida County.
2. The petitioner has received FoodShare benefits since at least February, 2013.

3. On February 12, 2014, the respondent sent the petitioner notice, which stated in pertinent part:

As of Feb 10, 2014, you have not used your QUEST card to buy food for 300 or more days. If you do not use your QUEST card before Feb 13, 2014, you will lose any FoodShare benefits that have been in your account for more than 365 days. ...

Exhibit 2.

4. On March 9, 2014, the respondent debited \$178.00 and \$86.53 from the petitioner's FoodShare account. On March 16, 2014, the respondent debited 89.00 from the petitioner's FoodShare account. On April 16, 2014, the respondent again debited 89.00 from the petitioner's FoodShare account.
5. The respondent did not send the petitioner any notices after February 12, 2014.
6. The petitioner timely appealed the agency's action on March 21, 2014.

### DISCUSSION

Federal FoodShare regulations require state agencies to "expunge benefits that have not been accessed by the household after a period of one year." 7 CFR § 274.12(f)(7)(ii). The record indicates that the petitioner has been receiving a FoodShare allotment since at least February of 2013. The respondent discovered that petitioner had not used her FS benefits for almost a full year, and sent a notice on February 12, 2014, indicating that petitioner's old, unused FS benefits would be expunged if not accessed by February 13, 2014. The respondent concedes that the notice was not received by petitioner until February 14, 2014, one day following the notice's identified deadline. The respondent encouraged petitioner to file a Request for Fair Hearing to correct this situation.

Federal FoodShare rules require the department to provide the FoodShare household with "timely and adequate advance notice" before taking an adverse action. 7 CFR § 273.13(a). To be considered adequate, a notice of adverse action must explain "in easily understandable language" the proposed action and the reason for the proposed action. 7 CFR § 273.13(a)(2). The department's notice told the petitioner only that she had to use her card by February 13, 2014, to avoid losing benefits that were in her account more than one year. One might infer from this language that all benefits had to be used within a year of when they were issued, but such an inference would be drawn without the guidance of easily understandable language. Furthermore, and most importantly, the notice failed to provide the petitioner with timely notice of the impending expungement of her FS benefits, and was accordingly completely deficient. It was impossible for the petitioner to comply with deadline imposed by the notice. Therefore the agency must reinstate any portion of the petitioner's allotment that it has expunged.

I note to the petitioner that after the agency restores her expunged benefits to her QUEST card, it can send her a new notice at any time that, if adequate, will allow it to again expunge any benefits not used within a year. Because of this I urge her to use those benefits as soon as possible.

### CONCLUSIONS OF LAW

1. The department did not properly notify the petitioner before expunging her FoodShare benefits in March and April of 2104.
2. The petitioner is entitled to have the FoodShare benefits expunged from her FoodShare account restored.

**NOW, 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 restore all FoodShare benefits expunged from the petitioner's account in March and April of 2014. Nothing in this decision prevents the agency from expunging any benefits she does not use within one year of receipt if it first provides her with timely and adequate notice of the proposed action, and it allows her at least 30 days to use any restored benefits.

**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 23rd day of May, 2014.

---

\sPeter McCombs  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 23, 2014.

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