



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/156698

PRELIMINARY RECITALS

Pursuant to a petition filed April 08, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 12, 2014, at Madison, Wisconsin.

The issue for determination is whether the Department established a basis for terminating petitioner's FS effective April 1, 2014.

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: Edward Sheskey

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. The agency issued a notice to petitioner on March 6, 2014 informing her that FS would be ending April 1, 2014.

3. Petitioner appealed.
4. The agency presented no evidence at hearing.

DISCUSSION

At the time of hearing, the agency worker with familiarity with this case was not available. Apparently neither was the worker's supervisor. Mr. Sheskey appeared with little notice of the hearing and provided the little information about the matter that he could discover given the mere minute or two he had to prepare. It is not clear why no one from the agency who knew about this case could appear. The hearing appears to have been noticed properly and the agency made no claim otherwise.

Prior to hearing, the agency did not submit any documents in support of its action. There was no notice of action, budget screen, income information, or anything that could be interpreted as a basis for an agency action.

At hearing, Mr. Sheskey explained that petitioner was over income for the FS program.

The agency offered nothing at the time of hearing to explain the action or support it. The agency submitted a packet of documents later in the day but the documents were not available to me or to petitioner at the time of hearing. The documents were not discussed and petitioner could not comment or rebut them. I cannot sustain a termination of benefits in such circumstances. The action may indeed be correct. Petitioner may be ineligible. But, the failure to meet the burden at hearing means that the April 1, 2014 termination cannot stand. Looking forward, **the agency may redetermine the eligibility and terminate if appropriate.** But, the agency would be wise to prepare a case for hearing before an ALJ if the petitioner requests a hearing to review that propriety of that action.

CONCLUSIONS OF LAW

The agency failed to present any material or persuasive evidence at hearing.

THEREFORE, it is **ORDERED**

That this matter is remanded to the agency with direction to reinstate FS benefits retroactive to April 1, 2014 and issue any appropriate supplements. These actions must be completed within 10 days.

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 27th day of May, 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 May 27, 2014.

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