



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/157273

PRELIMINARY RECITALS

Pursuant to a petition filed April 30, 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 May 28, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined the sufficiency of the petitioner's FS allotments for March, April & May, 2013.

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: Simone Johnson, IM Specialist
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. She was receiving FS as a casehead of an assistance group of three persons in February, 2014. In January and February, she received \$430 each month for a three person household in Transitional FS benefits as she was employed. In March, April, and May, 2014, she received \$495 per month for a six person household in Transitional FS benefits. In June, she was issued \$632 of FS for a four person household in Regular FS benefits.

2. On or about February 1, 2014, the petitioner's minor son, D.H., returned to live in her home. He had been living with an adult relative, and said relative had been receiving Kinship Care and FS for his care needs in the months preceding his return to his mother's home.
3. On February 26, 2014, the petitioner contacted the Department and informed her worker that her minor son had returned to her household, and she requested he be added to her FS group. Her son had been living with a relative and that relative was receiving Kinship Care benefits; and the child was in the relative's FS group as well. The worker contacted the Kinship Care program and the program was unaware the child had re-united with his biological mother; so the change was pending until the cessation of Kinship Care benefits was verified.
4. On March 6, 2014, the Department's worker received verification that Kinship Care had actually ended as of February 25, 2014; the worker called the petitioner and informed her that she needed to complete a renewal application for FS and BadgerCare, and this was done by telephone utilizing a now 4 person household, including son D.H., noting that the petitioner was not a fleeing felon or drug felon, had no disability, received verified child support, had no income, and reported no allowable expenses. It also appears the worker verified that the child had been removed from the grandmother's FS household effective the end of February, 2014.
5. On April 23, 2014, the petitioner affirmatively requested for the first time that she received Regular FS, not Transitional FS. She was no longer working and not a felon.
6. On April 30, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the sufficiency of her FS in March, April & May, 2014.

DISCUSSION

The problem in this case is that the petitioner was receiving Transitional FoodShare benefits in February – May, 2014. Transitional FS does not fluctuate month by month in terms of income and expenses. The relevant sections of the *FoodShare Wisconsin Handbook* are quoted, below:

5.1.1.1 TFS Introduction

Transitional FoodShare (TFS) benefits automatically extend FoodShare 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.

5.1.1.2 TFS Benefit Calculation

The TFS allotment is calculated using the income (less the W2 payment), expenses, and food group size from the month prior to the last W-2 cash payment (benefit determination month). This amount is frozen for the next 5 consecutive months, regardless of the number of months remaining in the most recent certification period for regular FS. A new 12 month certification period will begin when the household reapplies and is eligible for FS at the end of the TFS benefit period.

If a change is reported or becomes known to the agency, the change will be acted upon at time of reapplication at the end of the TFS benefit period.

5.1.1.3 TFS Change Reporting Requirements

The food unit has no change reporting requirements during the five-month TFS benefit period. Changes reported and acted upon for other programs will not change the TFS benefit amount. When a TFS case moves to another county, a recertification or review interview is not required to continue TFS.

Exceptions:

If it is reported that the primary person moves out of the TFS household, the TFS benefit will end and the case will close.

If the agency becomes aware that a TFS household moves out of state, the household's TFS benefits should end.

5.1.1.5 TFS Policy Exception

Dual participation in FoodShare Wisconsin is prohibited. The only time a TFS benefit allotment amount changes within the five-month period is if a TFS food group member moves out and becomes eligible to receive FS in another case. The TFS group's benefit amount will be reduced due to the change in household size. The allotment amount will be adjusted to the new household size. Income and expenses used in the original TFS benefit determination will remain the same even if the income or expenses belonged to the individual who left the household. This recalculated benefit amount will remain the same for the remainder of the five-month benefit period. Should that same person move back into the original TFS household, the benefit amount will remain at the reduced amount for the rest of the five-month period.

The dual participation policy is explained to the FS recipient in the initial TFS notice and an additional notice will be sent if the allotment is reduced.

Example 1: Sally and her two roommates share the same apartment and receive FS on the same case. Sally stopped receiving her W-2 payment in June because her only [child](#)  graduated from high school and moved out. The FS food unit consisting of Sally, her son and her two roommates receive TFS for 5 months. The household size and the allotment did not change because Sally's son never applied for his own FoodShare benefits after he moved out of the household.

If Sally's son begins receiving FS in another case, Sally's FS benefit would be reduced automatically at Adverse Action.

If a TFS food unit reports that they moved into a household with individuals who are required to be included in the same food unit as the TFS food unit, the newly configured food unit must decide whether to:

1. Reapply for regular FS with the new members and end the TFS benefit; or
2. Add the new household members to an open TFS FS case (the TFS benefit amount is frozen and will not increase if new members are added), or
3. Add the TFS members to the existing regular food unit and end the TFS.

5.1.1.7 Recertification During the TFS Benefit Period

TFS food units may request a recertification for regular FS at any time during the five-month TFS benefit period. If a food unit requests to end their TFS benefits and be recertified for regular FS benefits, the worker can determine a regular FS allotment amount. The recipient has the choice of which allotment they will receive. If the recipient chooses to receive regular FS benefits and end the TFS benefit, a recertification including a review interview must be completed.

5.1.1.8 Recertification When the TFS Benefit Period Expires

The TFS benefit period will end after five consecutive months. To continue receiving FS benefits the food unit must complete a recertification including an interview before the end of the 5th month in the TFS benefit period. The agency is responsible for scheduling the interview and making a benefit determination to meet the standard 30 day processing requirement. If benefits are not issued within 30 days, due to agency delay, the food unit is entitled to a continuation of TFS benefits until the determination is made. Delays caused by the food unit will result in a FS denial. Information known to the agency and any adjustments to the cost of living must be included as part of the redetermination for regular FS.

This is a close case. But I am satisfied that the agency did not follow TFS policy when the petitioner contacted it on February 26, 2014, essentially asking to add a person and implicitly to increase her FS. At that point in time, a worker should have been cognizant of TFS policies sufficiently to lay out the three options outlined in *FoodShare Wisconsin Handbook*, § 5.1.1.5, and requested the petitioner to make a choice. It would appear that this line of inquiry was overlooked pending the verification of the Kinship Care and ██████'s status in his grandmother's case. At the hearing, the petitioner has articulated that if she had been apprised of the choices, she would have chosen to end Transitional FoodShare benefits and re-apply for regular FS at that time.

The matter will be remanded to the agency for review and re-determination treating her household as if she applied for Regular FS on February 26, 2014, and the issuance of all supplemental FS to which she was otherwise entitled, if any, in March, April & May, 2014. If the petitioner is again aggrieved by the ultimate outcome of the re-determination, she must file a *new* appeal at that time. She is also advised that there is a *possibility* that the determination could result in a less FS that she received under Transitional FS; insufficient information is in this record for me to know that as fact. Finally, I also note that she cannot receive FS for this minor son for any month that the grandmother received FS for him as a member of her household. Dual FS household membership is prohibited by federal regulations.

CONCLUSIONS OF LAW

That the Department, by its agents, failed to correctly determine the sufficiency of the petitioner's FS as a Regular FS household for March – May, 2014, and the matter must be remanded for such an application to be processed as if it had occurred on February 26, 2014, rather than on April 23, 2014.

THEREFORE, it is

ORDERED

That the matter is remanded to the Department and MiES with instructions to: treat the petitioner's application for Regular FS of April 23, 2014, as if she filed it on February 26, 2014; review and re-determine her household's eligibility for Regular FS for March – May, 2014; and issue all supplemental FS to which she is otherwise entitled, if any, and after offset for all FS already issued. These actions shall be completed within 10 days of the date 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 9th day of June, 2014

\sKenneth D. Duren, Assistant Administrator
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 June 9, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability