



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/157308

PRELIMINARY RECITALS

Pursuant to a petition filed May 01, 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 Department correctly determined the sufficiency of the petitioner's May, 2014, FS allotment because it refused to add her minor son [redacted] to her household in that month because he was receiving FS as a member of his biological father's household.

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
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 is the casehead of a FS group. The petitioner was receiving FS in April with her son [redacted] as a household member.
2. The agency discovered that [redacted]'s name had been mis-stated or mis-recorded as "[redacted]" and his needs were being included in a separate FS household headed by the biological father of

██████████, to-wit, ██████████ ██████████. ██████████'s needs were included in both households in at least April, 2014, and in fact for many months prior.

3. On March 28, 2014, the agency issued a Notice of Decision to the petitioner informing her that her FS would be reduced from \$737 to \$632, effective May 1, 2014, because ██████████ had been removed from her group as not living with her, and that as "██████████" he was getting FS in another group.
4. The petitioner asserted that ██████████ has lived with her exclusively for 4 years, but I cannot conclude that is factually accurate on this record. Rather, it is clear that ██████████ lives with her now, and as of at least May 1, 2014.
5. On or about May 1, 2014, the petitioner verified that ██████████ lives with her based upon school records she provided. The Department informed the petitioner that ██████████ had already been issued FS for May, 2014, that included ██████████'s needs, and that the boy would be removed from her case for May, 2014, because duplicate benefits cannot be issued by an agency, and he would be added back to her ongoing case effective June 1, 2014.
6. On May 1, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting agency action to reduce her FS in May, 2014, by removing ██████████ from her group.

DISCUSSION

An agency may not issue duplicate benefits to two households under federal law. See, 7 C.F.R. § 273.3(a); and see, *FoodShare Wisconsin Handbook*, § 3.4.1. Here, the agency notified the petitioner in writing well in advance of the effective date that ██████████ was considered to be not in her household, and yet she took no action to appeal until 34 days later, after the effective date of the discontinuance. Had she taken some action prior to May 1, 2014, it may well have been that the agency would have been satisfied that ██████████ lived with her, and stopped Mr. ██████████ FS allotment, or the part of it attributable to ██████████'s inclusion in his group. But she did not.

The agency's actions here were taken upon a full panoply of meaningful notice to the petitioner. The petitioner ignored that notice at her peril, and as a consequence, benefits were issued to ██████████' household and not to her household, for ██████████'s needs.

That action must be sustained as in conformance with federal regulations. One of these households was overpaid for a significant period of time by misfeasance or malfeasance, one or the other. The petitioner would be well-advised to begin collecting evidence, in the form of witnesses and documents, that demonstrate when ██████████ was living with her, and when he was not. The Department is required under federal law to seek to recover all overpaid FS, regardless of cause.

CONCLUSIONS OF LAW

That the Department correctly determined the sufficiency of the petitioner's FS allotment for May, 2014.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby 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 10th 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

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The preceding decision was sent to the following parties on June 10, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability