



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/157638

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services ["MiLES"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on June 04, 2014.

The issue for determination is whether petitioner's FS allotment for May 2014 was calculated correctly.

There appeared at that time via telephone 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: Katherine May, HSPC Senior
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County, Wisconsin.

2. On April 8, 2014 petitioner reported to MiLES that her employment with *ATC Income Tax* would end on April 15, 2014; on April 21, 2014 she reported to MiLES that her employment with *ATC Income Tax* had ended on April 15, 2014.
3. MiLES sent a letter notice to petitioner dated April 22, 2014 and entitled *Notice of Proof Needed*; that notice informed petitioner that proof of her employment with *ATC Income Tax* was needed and was due by May 5, 2014.
4. Petitioner attempted to contact *ATC Income Tax* but could not get in touch with anyone; she tried the 800 telephone number given to her by the County; as soon as she was able to get the requested proof of employment she provided it to MiLES.
5. On May 16, 2014 MiLES received proof (a letter from the Office Manager) that petitioner's employment at *ATC Income Tax* had ended on April 15, 2014.

DISCUSSION

The agency must take prompt action on all changes to determine if the change affects the household's eligibility or allotment. 7 C.F.R. § 273.12(c)intro. (2014); *FoodShare Wisconsin Handbook* ["FWH"] 6.1.3. All reported changes that cause an increase in the FS benefit including person additions, increases in expenses, etc., will be effective the first of the month following the report month if required verifications are received within 10 days of the request for verification. FWH 6.1.3.3.; See also, 7 C.F.R. §§ 273.12(c)(1)(i) & (ii) (2014). Restoration of lost FS benefits must be provided to any FS household if the agency fails to take action on a change which increase benefits within the time limits specified. 7 C.F.R. § 273.12(c)intro. (2014).

The verification process must be done in accordance with regulations. 7 C.F.R. § 273.12(c)(1)(iii) (2014). The client has the primary responsibility for providing verification and to resolve questionable information. 7 C.F.R. § 273.2(f)(5)(i) (2014); FWH 1.2.1.3. However, the County must assist the household in obtaining verification and resolving questions as long as the household has not refused to cooperate. *Id.* For a determination of refusal to be made the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take. For example, to be denied for refusal to cooperate a household must refuse to be interviewed, not merely fail to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency must provide assistance. 7 C.F.R. §§ 273.2(d)(1) & 273.2(f)(5)(i) (2014).

The evidence in the record of this matter, as reflected in the above *Findings of Fact*, does not support a conclusion that petitioner has refused to cooperate. As soon as she was able to get the requested proof of employment she provided it to MiLES. For this reason the information that petitioner's employment at *ATC Income Tax* ended effective April 15, 2014 should have been used to calculate petitioner's FS allotment starting May 1, 2014.

CONCLUSIONS OF LAW

For the reason discussed above, the information that petitioner's employment at *ATC Income Tax* ended effective April 15, 2014 should have been used to calculate petitioner's FS starting May 1, 2014.

THEREFORE, it is

ORDERED

That this matter be REMANDED to the MiLES, and that, within 10 days of the date of this *Decision*, MiLES recalculate petitioner's May 2014 FS allotment, taking into account that petitioner's employment at *ATC Income Tax* ended effective April 15, 2014, and issue all FS for which petitioner is otherwise eligible retroactive to May 1, 2014.

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 25th day of June, 2014

\sSean P. Maloney
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 25, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability