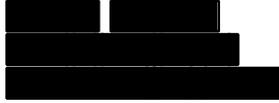




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159545

PRELIMINARY RECITALS

Pursuant to a petition filed August 04, 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 telephonic hearing was held on August 27, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services met its burden of proof to establish that it correctly and accurately reduced the petitioner's FoodShare (FS) benefits from \$425 to \$246 effective August 1, 2014.

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: Jose Silvestre, IM advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County who resides in a household of five.
2. The petitioner receives FoodShare (FS) benefits for a household of five.

3. Milwaukee Enrollment Services (MES) sent a July 18, 2014 Notice of Decision to the petitioner stating that her FS benefits would be reduced from \$425 to \$246 effective August 1, 2014, based upon petitioner receiving \$256 per week of Unemployment Compensation (UC) benefits.
4. During the first week of June, 2014, the petitioner reported to MES that her Unemployment Compensation (UC) benefits would end after the first week of July, 2014.
5. MES reduced the petitioner's FS benefits from \$425 to \$246 effective August 1, 2014, due to incorrectly continuing to budget UC benefits for the petitioner for the month of July, 2014.

DISCUSSION

During the August 27, 2014 hearing, the MES representative contended that the petitioner did not notify MES of her Unemployment Compensation ending until August 1, 2014. However, petitioner convincingly testified that during the first week of June, 2014, she reported to MES that her Unemployment Compensation (UC) benefits would end after the first week of July, 2014. The MES representative was unable to present any reliable evidence to refute the petitioner's convincing testimony.

In any reduction of benefits or calculation of benefits, the county agency has the burden of proof to establish that it correctly and accurately determined and calculated the recipient's benefits. The hearing record is clear that MES needs to re-calculate the petitioner's FS benefits as of August, 2014 based upon the above Findings of Fact. Accordingly, for the above reasons, I conclude that MES failed to meet its burden of proof to establish that it correctly and accurately reduced the petitioner's FoodShare (FS) benefits from \$425 to \$246 effective August 1, 2014.

CONCLUSIONS OF LAW

1. Milwaukee Enrollment Services (MES) did not meet its burden of proof to establish a prima facie case that it correctly and accurately reduced the petitioner's FoodShare (FS) benefits from \$425 to \$246 effective August 1, 2014.
2. MES needs to re-calculate petitioner's FS benefits for a household of five retroactive to August 1, 2014 based upon petitioner's Unemployment Compensation unearned income ending after the first week of July, 2014, and issue to the petitioner the supplemental FS benefits to which she was entitled for a household of five effective August, 2014.

THEREFORE, it is

ORDERED

The matter is remanded to the Milwaukee Enrollment Services (MES) with instructions to: a) re-calculate petitioner's FS benefits for a household of five retroactive to August 1, 2014 based upon petitioner's Unemployment Compensation unearned income ending after the first week of July, 2014; and b) issue to the petitioner the supplemental FS benefits to which she was entitled for a FS household of five retroactive to August 1, 2014, 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 26th day of September, 2014

\sGary M. Wolkstein
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 September 26, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability