



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159604

**PRELIMINARY RECITALS**

Pursuant to a petition filed August 06, 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 August 26, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner correctly prorated petitioner's July, 2014 FS benefits.

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  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County, who has an ongoing FS case.

2. Petitioner was the primary person in a FS household of 4 prior to July, 2014.
3. On or about June 4, 2014, JB, with petitioner's consent, requested that that he be added to petitioner's FS household, as he was living with petitioner and her family.
4. The respondent added JB to petitioner's FS household and requested employment verification. The request for verification was mailed to petitioner on June 4, 2014.
5. The petitioner provided the requested verification to the respondent via hand delivery at some point prior to June 11, 2014.
6. The respondent has no record of ever receiving the verification prior to July 15, 2014.
7. The respondent issued a notice to petitioner on June 17, 2014, indicating that verification had not been received, and as such, petitioner's FS case would close effective July 1, 2014.
8. On July 14, 2014, petitioner contacted the respondent because she had not received her FS allotment. On July 15, 2014, petitioner completed an in-person renewal, and provided the respondent with employment verification for JB.
9. On July 16, 2014, the respondent re-opened petitioner's FS case. Notice provided to the petitioner on that date indicated that July benefits would be prorated for the period of July 15-July 31, 2014, with no explanation for the proration.

### DISCUSSION

The FoodShare Wisconsin Handbook (FWH) provides directives to county agencies which set forth the agency and client responsibilities when processing an FS application or review. The FWH also instructs that county agencies request verification of any questionable items. FWH § 1.2.5. Written notices of requested verification are to be issued and clients are to be assisted in obtaining verification if they have difficulty in obtaining that information. FWH § 1.2.1.2. An FS recipient may not be penalized for failing to comply in a timely manner with FS verification requirements if the recipient can demonstrate good cause for failing to comply in a timely manner with the verification requirement. FWH § 1.2.1.3; 7 CFR §273.2(f). Moreover, the FWH requires that all programs affected be denied or reduced when a client has been given a proper written verification request, the information is needed to determine current eligibility, the client has the power to produce the verification, and the proper time limit for verification has passed without production of the requested verification. FWH § 1.2.1.2.

The FoodShare Wisconsin Handbook also tells the worker that the FS case will close effective the last day of the review month at adverse action of the review month if the review is not completed, including confirmation. FWH § 2.2.1.4. The county agency worker and the FS recipient have until the end of the review month to complete the review without a new application being required. Id. If there is an agency delay or if further verifications are pending, additional days can be added to that time frame without a new application being required. Id. Once a case is closed, the recipient is required to submit a new application for FS. See e.g., FWH § 2.2.1.4.

An individual is required to report any change within ten (10) days. FWH, §6.1.3. This applies to earned income, unearned income, employment or household composition. When an individual reports a change which results in an increase in FS benefits, agencies must implement that change effective the first of the month following the month of report. Bureau of Work Support Programs Operations Memo # 01-23, issued 04/17/01.

In a Fair Hearing concerning the propriety of a discontinuance or reduction of benefits, such as this, the county agency has the burden of proof to establish that the action taken by the county was proper. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the discontinuance action was required. An FS recipient must timely report household composition changes within ten (10) days. 7 C.F.R. §273.14. Failure to provide requested verification results in the closing of the case. If the verification is not completed until after the case is closed because of household error or inaction, the FS allotment is not issued in full. Instead, the case is treated as a new application, and benefits are to be prorated as of the date of the review. 7 C.F.R. §273.14(e)(3); FS Handbook, Appendix 2.2.1.4.

Petitioner testified that JB provided the requested verifications in person to the respondent within days following the addition of JB to her FS household. Her testimony was detailed and credible. Based upon the above, I am persuaded that the verification documentation was provided timely as stated.

### CONCLUSIONS OF LAW

Petitioner provided the respondent with the requested employment verification documentation timely.

**NOW, THEREFORE, it is** **ORDERED**

That the matter be remanded to the county with instructions to review and determine petitioner's FS eligibility for the period of July 1, 2014-July 14, 2014, and to issue appropriate FS for that period. All actions required by this Order shall be completed within 10 days following issuance 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**

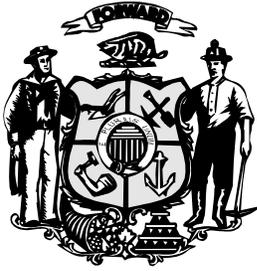
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 25th day of September, 2014.

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\sPeter McCombs  
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 September 25, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability