



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/160393

PRELIMINARY RECITALS

Pursuant to a petition filed September 08, 2014, under Wis. Admin. Code §HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on October 28, 2014.

The issue for determination is whether the agency has met its burden to show that it acted correctly in terminating petitioner's FS effective October 1, 2014 for failing to verify information.

There appeared at that time and place 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: Leslie Vosters, Fair Hearing Coordinator
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. In August 2014 an agency worker received an alert that petitioner was receiving FS in another state.

3. On August 12, 2014 the agency issued a Notice Of Proof Needed to petitioner requesting proof of FS benefits in another state. See Exhibit A. The information was due back to the agency by August 21, 2014. The petitioner did not provide any response to the agency in that timeframe.
4. On August 25, 2014 the agency issued a notice to petitioner advising her that her FS were ending on October 1, 2014 because she was receiving FS in another state.

DISCUSSION

Federal regulations that govern the FS program require that certain items must be verified, that is, confirmed by documentation or third party contacts. 7 CFR 273.2(f)(2). Local agencies may request verification of other factors if information provided at application, review, or reported change is questionable, unclear, or incomplete and would have an effect on FS eligibility or benefit level. *FoodShare Handbook*, §1.2.5 (available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.) Such items include student status, gross nonexempt income, residency and shelter costs. See, 7 C.F.R. §273.2(f), generally.

The local agency **must** give food units at least 10 days to provide required verification. *FoodShare Handbook*, §1.2.1. Requests for verification must be made in writing. Workers are required to give the customer notice regarding required verification, when it is due to the agency, and the consequences of not verifying timely. If an individual does not provide verification within the requested timeframe, FS are to be denied. *FoodShare Handbook*, §1.2.1.2.

In a hearing such as this for FS, it is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In other words, the agency must show why it did what it did and that it did so correctly. In this case, the agency requested verification with a due date that only gave the petitioner 9 days. As such, I do not find that the agency correctly followed the policy requiring that the petitioner be given at least 10 days. I also note that the Case Comments reveal that the son contacted the agency on August 27 to explain his mother's situation as she does not speak English well. The agency did not act on this report. If the agency continues to require this verification, it must act according to its own policy. I also add that the local agency must assist the petitioner in obtaining this verification providing she has not refused to cooperate with the process. *FoodShare Handbook*, §1.2.1.3. According to the testimony, the petitioner has not refused to cooperate, but rather is unsure of how to get the information requested. I have seen many FS cases where a Wisconsin FS agency has been able to communicate with out-of-state FS agencies to determine if FS benefits are being received in another state. This may be one of those instances where the agency has a better ability to acquire the information it seeks than the petitioner.

CONCLUSIONS OF LAW

The agency has not met its burden to show that it acted correctly in terminating petitioner's FS effective October 1, 2014 for failing to verify information

THEREFORE, it is

ORDERED

That the matter is remanded to the agency to (1) redetermine petitioner's FS effective October 1, 2014 to current, (2) issue any FS for which she is eligible accordingly, and (3) issue a notice of decision regarding same. These actions shall be taken within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

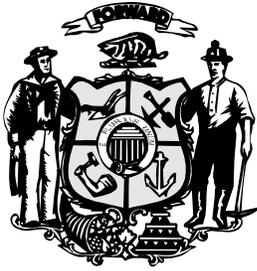
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of November, 2014

\sKelly Cochrane
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 November 5, 2014.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability