



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/160739

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 20, 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 October 14, 2014, at Milwaukee, Wisconsin. At the request of petitioner, the record was held open until October 28, 2014 for written closing arguments to be submitted to the Division of Hearings and Appeals (DHA). MES timely submitted a closing argument to DHA. However, petitioner failed to submit any closing argument to DHA.

The issue for determination is whether there is sufficient reliable evidence in the hearing record to determine whether Milwaukee Enrollment Services (MES) correctly calculated and issued FoodShare (FS) benefits to the petitioner as of August, 2014.

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: Simone Johnson, 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 resided with her husband, [REDACTED].
2. The petitioner received FoodShare (FS) benefits of \$497 from February, 2014 through July, 2014 for a FS household of three.
3. In a June 29, 2014 six month report (SMRF), petitioner reported to the county agency that she was employed at [REDACTED] working 40 hours per week at \$12 per hour for a gross income of \$2,030.72. Petitioner also reported that her husband was employed at [REDACTED] working 40 hours per week at \$16 per hour for a gross income of \$2,752.
4. The county agency sent a July 3, 2014 Notice of Decision to the petitioner stating that her FoodShare (FS) benefits would discontinue effective August 1, 2014, due to household income above the FS income eligibility limits for a household of three (petitioner, her husband and her step-daughter, [REDACTED]).
5. Due to the closure notice, [REDACTED] was placed in the FS group of petitioner's mother, [REDACTED], in Waukesha County.
6. The county agency sent an August 21, 2014 Notice of decision to the petitioner stating that petitioner was eligible for FS benefits of \$134 as of August 1, 2014 for a reduced household size from three to two persons (without including [REDACTED] in petitioner's FS household).
7. Many changes have occurred to petitioner's FS household which indicate that the county agency needs to re-calculate the petitioner's FS benefits as of August 1, 2014 and continuing: a) the county agency did not receive confirmation until August 25, 2014 of petitioner's new court order indicating that petitioner and her husband had primary placement of [REDACTED]; and b) the county agency did not receive proof of petitioner's husband's employment at [REDACTED] ending until August 20, 2014, and that he began receiving Unemployment Compensation (UC) benefits as of September, 2014; and c) there is no reliable documentation of the amount or date of petitioner's husband's last paycheck from [REDACTED] or when he began receiving UC benefits and in what amount.
8. No reliable, non-hearsay evidence of the petitioner's household earned and unearned income was provided in order to determine whether MES accurately determined petitioner's FS benefits as of August, 2014.
9. In its closing argument and attached FS worksheet, the county agency indicated that petitioner received FS benefits of \$51 for August, 2014 and \$134 for September, 2014. In that same closing argument, the agency alleged that the petitioner's FS benefits should have been \$55 for August, 2014 and \$46 for September, 2014.
10. The petitioner did not submit any closing argument to DHA.

**DISCUSSION**

During the October 14, 2014 hearing, there was confusion, and a lack of reliable, non-hearsay evidence as to whether the county agency correctly calculated and issued FS benefits to the petitioner as of August, 2014. See above Findings of Fact. There have been many changes to petitioner's FS household composition, and changes in household employment and earned income and Unemployment Compensation (UC) unearned income. See Findings of Fact #3 - 7 above. As indicated in Finding of Fact #8 above, no reliable, non-hearsay evidence of the petitioner's household earned and unearned income was provided in order to determine whether MES accurately determined petitioner's FS benefits

as of August, 2014. However, some of the reason for this lack of sufficient evidence was that petitioner did not timely report and verify to the county agency the changes in her FS household composition or household earned and unearned income.

The county agency has the burden of proof to establish a prima facie case that it correctly and accurately determined petitioner's FS benefits as of August, 2014. As explained above, there is simply not enough reliable, non-hearsay testimony or documentation in the hearing record to determine whether the county correctly or accurately issued FS benefits to the petitioner as of August, 2014 for her FS household (of three or two persons). Accordingly, based upon the above, I conclude that there is insufficient reliable evidence in the hearing record to determine whether the county agency correctly calculated and issued FS to the petitioner as of August, 2014.

### CONCLUSIONS OF LAW

There is insufficient reliable evidence in the hearing record to determine whether the county agency correctly calculated and issued FS benefits to the petitioner as of August, 2014.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to the Milwaukee Enrollment Services with instructions to: a) re-determine petitioner's FS benefits as of August, 2014; b) issue a new notice of decision which explains in detail the county's re-calculation of petitioner's FS benefits as of August, 2014; and c) if appropriate, issue to the petitioner any supplemental FS benefits to which petitioner may be entitled retroactive to August 1, 2014, within 10 days of the date of this Decision. If the petitioner disagrees with the new notice, petitioner must submit a new appeal to DHA specifying what she is appealing, and include a copy of that new notice with her new appeal.

### **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 20th day of November, 2014

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\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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 20, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability