



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/161585

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 24, 2014, at Madison, Wisconsin.

The issue for determination is whether petitioner is due backdated FS from July 2014 to November 2014 for her child O.

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: Christy Chapman

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner applied for FS on July 18, 2014 and was approved for her household except for her child, O.

3. At the time, O. was being claimed on a FS case of her father. O., however, had never actually resided with her father.
4. The agency sent various notices to petitioner informing her that FS was approved and the allotment amounts. Each of these notices indicated that no FS was being allotted for O.
5. Petitioner did not realize that O was not receiving FS until October.
6. On October 15, petitioner contacted the agency and the agency explained that O. was receiving FS on the father's case. The agency sought verification of O.'s residence with petitioner.
7. On October 20, 2014, petitioner provided verification.
8. The agency transferred O. to petitioner's case effective December 1, 2014.
9. Petitioner appealed.

DISCUSSION

The federal regulations and FoodShare Eligibility Handbook both explain that a person cannot be a member of more than one food unit and one FS group in the same month, except residents of shelters for battered women and children. 7 C.F.R. 273.3(a) and *FoodShare Eligibility Handbook*, 3.4.1.

The agency gave notice to petitioner on August 8 and September 9, 2014 that O. was not receiving FS on her case. The delay of inquiring until October 15 was not the responsibility of the agency. But, petitioner was proactive and timely in her October 15 report to the agency that O. had never lived with the father who was claiming her. The agency certainly could have accepted her report and made the change at that point. The agency representative testified that it sought documentation for this questionable report. Petitioner was quite prompt in getting the court order verification to the agency by October 20. At that point, the change should have been made and benefits paid to petitioner. From that point forward, the child O. was not properly a member on the father's case and benefits were not properly disbursed to him for the month of November. It is unfortunate that the system used by the agency or the state is not responsive enough to cease an apparently fraudulent payment. But, the November benefits should not have been paid the the agency can seek recoupment.

CONCLUSIONS OF LAW

1. The child was not properly a member of the father's FS case for November 2014 and benefits should have been paid to petitioner.
2. The agency was correct for not disbursing FS for O. to petitioner in July – September 2014 as O. was a member of the father's case.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with instructions to disburse a FS supplement to petitioner for the amount that would have been allotted to petitioner on behalf of the child O. for the month of November 2014. This action shall be completed within 10 days.

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 November, 2014

\sJohn P. Tedesco
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 25, 2014.

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