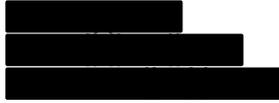




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/161603

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 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 November 18, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's FS benefits for November, 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: Simone Johnson
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On September 29, 2014, the Petitioner contacted the agency and requested that her daughter [redacted] be removed from her case because [redacted] was moving to her father's home on October 1, 2014.

3. On October 14, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits of \$354 effective November, 2014 for herself and her son.
4. On October 15, 2014, the Petitioner contacted the agency to request that [REDACTED] be put back in her household because she did not move in with her father as expected. The agency pended both Petitioner's case and [REDACTED]'s father's case for verification of [REDACTED]'s residence.
5. On October 16, 2014, the agency issued a Notice of Action and Proof Needed to Petitioner and to [REDACTED]'s father requesting verification of who resides in the household. The due date was October 27, 2014.
6. On October 21, 2014, the Petitioner contacted the agency again and provided verification that [REDACTED] was in her household. The agency removed [REDACTED] from her father's case and put her on the Petitioner's case.
7. On October 22, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits for [REDACTED] starting December 1, 2014.
8. On October 22, 2014, the agency issued a Notice of Decision to [REDACTED]'s father notifying him that he would no longer receive FS benefits for [REDACTED] starting December 1, 2014.
9. FS benefits were issued for [REDACTED] to [REDACTED]'s father for November, 2014.
10. On October 30, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

For purposes of FoodShare (FS) benefits, when parents have joint or shared physical custody of children, the children are included in the household where they reside when they are under the care and control of a parent or other caretaker in that household. FoodShare Handbook (FSH), § 3.2.1.1.

Any changes that are reported by a FS recipient must be acted upon by the agency. FSH, § 6.1.1.2. The agency must request verification as soon as possible but are required to act within 10 days of the date of the change report. FSH, § 6.1.3.1.

All reported changes that cause an increase in the FS benefit including person additions will be effective the first of the month following the report month if required verifications are received within 10 days of the request for verification. FSH, § 6.1.3.3 and 7 CFR 273.12(c)(1).

For reported changes that result in a decrease in benefits, the change must be processed to allow for adequate negative notice to be issued. If verifications are not received within 10 days, and the FS case is not closed for at least one day, changes are effective the first of the month following the month verifications are received. FSH, § 6.1.3.6 and 7 CFR 273.12(c)(2)(i).

In this case, both the Petitioner's case and [REDACTED]'s father's case were pended on October 15, 2014 for verification when the Petitioner contacted the agency to have [REDACTED] put back on her case. According to the agency's case comments, verification was received on October 21, 2014 that [REDACTED] was in the Petitioner's household and had never moved to her father's as planned. The verification was provided within 10 days and the agency could have sent a negative notice to [REDACTED]'s father on October 21, 2014 to allow for 10 days notice.

The FSH states that "the change must be processed to allow for adequate notice to be issued." Since both cases were pended, verification was received within 10 days and there was an opportunity to process the change to allow for adequate negative notice to [REDACTED]'s father, I find that the agency erred in issuing benefits to [REDACTED]'s father instead of the Petitioner for November, 2014.

CONCLUSIONS OF LAW

The agency did not properly determine the Petitioner's benefits for November, 2014.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to re-determine the Petitioner's FS benefits for November, 2014 for a household of three that includes [REDACTED]. The agency shall issue a Notice of Decision to the Petitioner and any supplemental FS benefits Petitioner is entitled to for November, 2014. These actions shall be completed 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

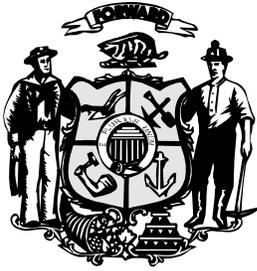
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 15th day of December, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on December 15, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability