



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
Redact

DECISION

FOO/161770

PRELIMINARY RECITALS

Pursuant to a petition filed November 07, 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 25, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner failed to complete a review.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [Redacted]

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 # [Redacted]) is a resident of Milwaukee County who receives FS.
2. Petitioner was scheduled to complete a review by October 5, 2014, and the county sent her a six-month report form (SMRF) to complete. Petitioner completed the SMRF and sent it via US Mail on September 25, 2014. The SMRF was not returned to petitioner.

3. The SMRF was not processed by the respondent. The respondent has no record of receiving petitioner's SMRF. As a result, by a notice dated October 17, 2014, the county informed petitioner that FS would end as of November 1, 2014 because she did not complete her review.
4. Petitioner reapplied for FS in November, 2014, after learning that her case had closed, and her case was reopened. November FS was prorated according to petitioner's November 7, 2014, application date.

DISCUSSION

An FS recipient must do a periodic review to continue eligibility. 7 C.F.R. §273.14. Failure to complete a review results in the closing of the case. If the review is not completed until after the case is closed because of household error or inaction, the FS are 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 new application. 7 C.F.R. §273.14(e)(3); FS Handbook § 2.2.1.4.

The county closed petitioner's FS because the SMRF was not received. Petitioner testified that she sent it via US Mail, and the respondent indicates that it has no record of ever receiving the form from petitioner. I am going to give the petitioner the benefit of the doubt here. She testified credibly regarding her SMRF mailing, and noted that she has been an FS recipient for several years. She is familiar with her filing requirements, and I see that she has not filed Requests for Hearing previously. This leads me to believe that she has not has issues with her benefits previously. While this case could go either way, I am persuaded that the failure to complete the review was not the fault of the petitioner, and petitioner's FS can be backdated to November 1, 2014.

CONCLUSIONS OF LAW

Petitioner timely completed her SMRF and submitted that to the respondent.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to issue petitioner appropriate FS for the period November 1, 2014, through November 7, 2014, because she completed and returned her SMRF timely but it was apparently lost in the mail or at the agency. The county shall issue the FS within 10 days 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 23rd day of December, 2014.

\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 December 23, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability