



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/161941

PRELIMINARY RECITALS

Pursuant to a petition filed November 14, 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 telephonic hearing was held on December 04, 2014.

The issue for determination is whether the agency correctly prorated petitioner's FS 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, IM Spec. Adv.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On September 30, 2014 petitioner reported new employment with [redacted].
3. On October 6, 2014 the agency issued a notice of decision to petitioner stating that her FS would close November 1, 2014 because she was over the FS income limit.

4. On October 29, 2014 the agency again issued a notice of decision to petitioner stating that her FS would close November 1, 2014 because she was over the FS income limit.
5. On November 14, 2014 the agency received verification from the petitioner that she was not on assignment with Hatch Staffing and thus no longer receiving income from that position. The agency re-opened petitioner's FS and issued prorated benefits of \$268 for November 14-30, 2014.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. §273.9(b). In this case, the agency budgeted petitioner's income and found her ineligible for FS as she was over the income limit.

The petitioner's contention in this matter was that she reported that her income had changed/ended prior to the month of case closure. There is no evidence that this occurred on October 31, 2014 as she argues. Rather, the preponderance of the evidence supports a finding that she reported the change on November 14, which caused her case to re-open and prorated benefits issued. FS policy states:

FS may also close for reasons other than verification. Allow FS to reopen when a change in circumstances during the month following the month of case closure causes the HH to regain FS eligibility, as long as the HH takes the required action.

Example 3: Pam's FS closes effective September 30 due to a pay increase at her job. Pam contacts her worker, Linda on October 8 to indicate her hours have been cut and she wants to reapply for FS. Linda informs Pam that she has the option of reapplying for FS or may provide verification of her new work hours to reopen FS effective the date she provides the verification. Pam chooses to provide verification, which she submits on October 12. Linda reopens Pam's FS with prorated benefits from October 12 forward.

See *FS Handbook*, §6.1.3.1 (Processing Reported Changes), available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. Petitioner testified that she faxed a document from her employer on October 31, 2014 to the agency indicating that her job assignments had ended on October 31, 2014. There is no fax confirmation sheet to show that this occurred on that date, or to the agency's correct fax number, and no letter from the employer to show what, if anything, was faxed on that date. Accordingly, I find that the agency acted correctly here.

Petitioner testified that she has had issues with faxing documents to the agency in the past. She is reminded here that she should keep copies of what she faxes to the agency and its confirmation sheet to avoid similar problems in the future, and/or provide her documents in person to the agency where she can get a "received" date stamp on them to confirm her reporting dates.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency correctly prorated petitioner's FS for November 2014.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

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.

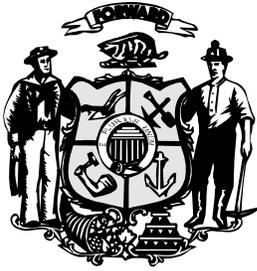
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 9th day of January, 2015

\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 January 9, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability