



FH

Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]

DECISION

[Redacted]

[Redacted]

FOO/162638

PRELIMINARY RECITALS

Pursuant to a petition filed December 13, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Door County Department of Social Services in regard to FoodShare benefits (FS), a telephone hearing was held on January 06, 2015. The record was not held open post-hearing. However, on January 13, 2015, two faxes were received from the respondent, and on January 21, 2015, a fax was received on behalf of the petitioner. None of the documents submitted post-hearing have been admitted as exhibits due to the fact that neither party was provided an opportunity to review and/or offer testimony regarding the content of said documents.

The issue for determination is whether the respondent correctly terminated petitioner's FS enrollment due to petitioner's alleged failure to verify her income.

There appeared at that time 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: [Redacted]

Door County Department of Social Services
Door County Government Center
421 Nebraska Street
Sturgeon Bay, WI 54235-0670

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Redact) is a resident of Door County.
2. Petitioner received FS, but was informed that her FS was closing effective January 1, 2015, for failure to verify her income relating to her request for Medical Assistance (QMB).
3. Petitioner provided copies of bank statements to the respondent, but the county worker wanted further information regarding two deposits.

DISCUSSION

An FS recipient/applicant is required to verify information that can affect eligibility. 7 C.F.R. §273.2(f). If the household fails to verify required information by the time limit, the agency may deny the FS. 7 C.F.R. §273.14(g)(3); FS Handbook, § 1.2.1.2. The household has primary responsibility for verifying information, but the agency shall assist the household if the household is cooperating. 7 C.F.R. §273.2(f)(5)(i); FS Handbook, § 1.2.1.3.

In a Fair Hearing concerning the propriety of a discontinuance of benefits, such as this, the respondent has the burden of proof to establish that the action taken by the respondent was proper. Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the discontinuance action was required.

The respondent presented no exhibits at hearing, relying solely on testimony to establish that it correctly discontinued FS benefits. As such, the record does not establish the content of any notices or verification requests. An appeal summary prepared by the respondent was included in the file, but not added as an exhibit, since there was no indication that the summary was provided to the petitioner. The summary contains a timeline of sorts, but nothing was entered into the record to corroborate of the information contained therein.

The respondent focused its discontinuance determination on two deposits, one dated October 20, 2014, in the amount of \$263.41, and a second dated November 10, 2014, in the amount of \$433.41. The respondent testified that because the petitioner did not timely provide adequate verification of these items, her FS was slated to terminate.

Verification policy states:

1.2.1.2 Request for Verification

Requests for verification **MUST** be made in writing. Verbal requests are not acceptable and will not stand up in a fair hearing. Workers are required to give the customer notice regarding required verification, when it is due to the agency, and the consequences of not verifying timely.

Do not deny the **FS** group for failure to provide the required verification until the:

1. 10th day after requesting the verification, or
2. 30th day of the application or review processing period, whichever is later.

If the 10th or 30th day falls on a weekend or postal holiday :

- **For negative actions** - the action should be taken the next business day.

- **For approvals or positive actions-** the approval must be processed no later than the due date. Waiting until the next business day or later to process verification for an eligible household is untimely and therefore not allowable.

Note: Allow FS to reopen at SMRF or recertification when closed for lack of verification or other reasons if the reason for case closure is fully resolved during the calendar month following case closure, as long as the SMRF is returned no later than the last day of the 7th month or review interview was timely.

Allow FS to reopen when closed for lack of verification after a change is reported or discovered, as long the requested verification is provided in the calendar month following case closure.

In these situations benefits are prorated from the day the HH completes all the required actions needed to determine eligibility.

1.2.1.3 Responsibility for Verification

The applicant has primary responsibility for providing required verification and for resolving any discrepancies or questionable information. The local agency must assist the applicant in obtaining this verification providing the applicant has not refused to cooperate with the application process.

If all attempts to verify the information have been unsuccessful because the person or organization providing the information has failed to cooperate with the household and agency (for example, by charging a fee or refusing to complete a verification form), and all other sources of verification are unavailable, determine an amount to be used for certification purposes based on the best available information. Clearly document the attempts to obtain verification and the reasoning for the estimate that is used. Best available information may include; customer statement, oral or written.

FS Handbook, § 1.2.1.2 and 1.2.1.3, and *see*, 7 CFR 273.2(c)(5) and 7 CFR 273.2(f)(5). Based on the record before me, it is difficult to determine whether the respondent has complied with some, or any, of the verification request requirements.

Furthermore, under FS policy the worker must make a best estimate of prospective income. FS Handbook, § 8.3.4.3. Whether the two deposits constitute prospective, ongoing income is unknown. The respondent testified that it believes that petitioner is receiving short term disability payments. Nothing in the record corroborates this.

Considering the lack of any documentation establishing that the respondent correctly terminated petitioner's FS benefits, I will remand the case to the respondent to rescind the termination of petitioner's FS enrollment. Nothing in this decision shall preclude the respondent from pursuing verification of petitioner's income going forward; this decision is limited in scope to the determination that the respondent has failed to establish that it correctly terminated petitioner's FS enrollment effective January 1, 2015.

CONCLUSIONS OF LAW

The respondent failed to establish that it correctly terminated petitioner's FS for failing to verify income.

NOW, THEREFORE, it is ORDERED

That the matter be remanded to the county with instructions to rescind its termination of petitioner's FS enrollment effective January 1, 2015. The county shall take this action 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 29th day of January, 2015.

\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 January 29, 2015.

Door County Department of Social Services
Division of Health Care Access and Accountability