



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

FOO/163629

PRELIMINARY RECITALS

Pursuant to a petition filed January 28, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 19, 2015, at Balsam Lake, Wisconsin.

The issue for determination is whether the agency correctly ended the petitioner's FoodShare benefits because she did not verify that her daughter was being homeschooled after she turned 18.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

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

By: Redact

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # Redact) is a resident of Polk County.
2. The petitioner's daughter lives with her. She turned 18 on September 5, 2014.
3. The petitioner applied for FoodShare on December 19, 2014.

4. The county agency denied the petitioner's application for FoodShare because she did not verify that her daughter was being home-schooled by January 26, 2015. .
5. The county agency did not submit a copy of it request for verification.
6. The petitioner made a reasonable attempt to obtain the requested information but was unable to do so.

### DISCUSSION

The county agency denied the petitioner's application for FoodShare because she did not adequately verify that her 18-years-old daughter was still being homeschooled. FoodShare applicants must verify information the agency needs to determine their eligibility. 7 CFR § 273.2(f). Agencies must give applicants the later of 10 days from the request or 30 days from the date of application to provide the information. Agencies must deny benefits to those who fail to verify information 7 CFR § 273.2(c)(5); *FoodShare Wisconsin Handbook*, § 1.2.1.2. But this does not mean that the agency can deny benefits to anyone who does not comply with a request.

Federal regulations state: "For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process." 7 CFR § 273.2(d)(1) (d). Moreover, the "State agency must assist the household in obtaining this verification provided the household is cooperating with the State agency..." 7 CFR § 273.2(f)(5). The petitioner attempted to get the requested information from both the Department of Public Instruction and a homeschooling clearing house, but could not. The worker acknowledged that the petitioner made a good effort but testified that if she wants to receive benefits, she has to figure out a way to get the information. The worker was not aware of anything else the petitioner could have done to obtain the requested information. Nor did she attempt to get the information herself. Her position contradicts FoodShare law and thus cannot provide a basis for denying benefits.

But even more importantly than whether the petitioner should have been able to provide it is that the information is irrelevant. The federal rules indicate what information must be verified. Nothing in 7 CFR § 273.2(f) requires applicants to verify that an 18-year-old is being homeschooled. The rules do allow agencies to verify "all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level." 7 CFR § 273.2(f)(2). Whether an 18-year-old is in or out of school is irrelevant because it has no effect on her benefits. The agency contends that it needed to know this information because if she was not in school she might be working. If that is what it was after, it should have just asked if she was working because FoodShare rules count the income of 18-year-old members of the household regardless of whether they are in school; a student's income is excluded only until she turns 18. 7 CFR § 273.9(c)(7).

I am remanding this matter back to the agency to determine the petitioner's eligibility based upon her application date. In making this decision, I am aware that it is somewhat vague about exactly what information the agency requested. That is because the agency never provided a copy of its request to the Division of Hearings and Appeals.

### CONCLUSIONS OF LAW

The county agency incorrectly denied the petitioner's application for FoodShare because of her failure to verify her daughter's home-school status because that information is irrelevant to determining her benefits.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it continue processing the petitioner's December 19, 2015, application for FoodShare. If it finds her eligible, it shall issue a supplemental FoodShare allotment based upon her application date. If it finds her ineligible, she may file a new appeal. When determining the petitioner's eligibility, the agency shall not consider whether she verified her daughter's home-school status.

### **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 27th day of March, 2015

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\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 27, 2015.

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