



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]

DECISION

FOO/164296

PRELIMINARY RECITALS

Pursuant to a petition filed February 27, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 18, 2015, at Janesville, Wisconsin.

The issue for determination is whether the Department correctly began the petitioner's FS benefits effective February 19, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]

Respondent:

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

By: [Redacted], ES Spec.
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Rock County.

2. The petitioner filed an FS and BadgerCare Plus (BCP) application on January 7, 2015. That application was denied for excess income. The Department issued written notice of FS denial on February 2, 2015. BCP was approved for the petitioner and a child, but not for her husband. *See*, Exhibit 1.
3. On February 12, 2015, the petitioner called the Department's Southern Consortium call center. She reported that her household income had decreased as of February 1. In response, the Department mailed her a written verification request, asking for proof of her husband's decreased income within 10 days. *See*, Exhibit 2. The petitioner timely supplied that verification.
4. On February 19, 2015, the petitioner placed another call to the Southern Consortium call center. She asked about the status of her FS application; after being advised that an application had not been started on February 12, she asked that another FS application be taken. The application and "telephonic signature" were taken on February 19.
5. The petitioner was found to be eligible for FS effective February 19, 2015. The Department issued prorated FS benefits (\$66) for February, running from February 19. The petitioner's husband was also found to be eligible for BCP at that time. Written notice of this approval was sent to the petitioner on March 2, 2015. *See*, Exhibit 3.

### DISCUSSION

To be eligible for FS, a household must first sign an application form, be interviewed, and supply requested verification. 7 C.F.R. §273.2(a)(2),(c); *FS Wisconsin Handbook (FSWH)*, 2.1.1, available at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

The petitioner's January 7 application was correctly denied, with the denial notice issued on February 2. Department policy declares that if new information (*e.g.*, income decrease) comes in before the 30-day application processing period has elapsed, FS eligibility should be re-determined without requiring the filing of a new application. *FSWH*, 2.1.5. The petitioner reported new information more than 30 days from the 30-day period running from the January 7, application, so a new application was required from her here.

The petitioner testified that she telephoned the call center on February 12, 2015, in effort to apply for FS and receive BCP for her husband, because household income had decreased. The call center worker that she spoke to was not present at hearing to testify. The Department's contemporaneous Case Comments state that the petitioner spoke to a call center worker on February 12 about the household's decreased income. Applying for FS by telephone is permissible. *Id.*, § 2.1.1.2. To preserve February 12 as the new application date, the petitioner was required to provide her name address and a telephonic signature. *Id.*, § 2.1.1.4, item #5. The call center worker did not provide the petitioner with the option of creating a telephonic signature. Instead, the worker issued an income verification request letter. There appears to be no point to seeking verification if the caller was not seeking a new benefit. Thus, I believe the petitioner's testimony as to what happened on February 12, 2015.

The *FSWH* repeatedly states that "agencies must encourage individuals to file an application or set a filing date for FoodShare on the same day they [applicants] express an interest in FS or concerns about food insecurity." *Id.*, § 2.1.1. More significantly, the federal FS regulations emphasize that an agency cannot impede an application attempt. For example:

(c) *Filing an application – (1) Household's right to file. ...*

Each household has the right to file an application form on the same day it contacts the food stamp office during office hours. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the form contains the applicant's name and address, and is

signed by a responsible member of the household or the household's authorized representative. ...

(2) *Contacting the food stamps office.* (i) State agencies shall encourage households to file an application form the same day the household or its representative contacts the food stamps office in person or by telephone and expresses interest in obtaining food stamps assistance or expresses concerns which indicate food insecurity. ... it shall encourage applicants to continue with their application for food stamps. ...

7 C.F.R. § 273.2(c)(1),(2).

The petitioner was attempting to telephonically file a new FS application on February 12. The agency/call center violated the federal requirement that she be encouraged to file on the date of contact. There is no factual dispute that a contact was made on February 12, per Case Comments. Why did the call center mail out an income verification request if the petitioner was not interested in applying for benefits? I conclude that the call center impeded the petitioner's attempt to apply for FS on February 12. Violation of the federal rule must have a consequence, or the rule is meaningless. In this instance, the consequence will be that I shall order the Department to re-determine the petitioner's February FS allotment, using a filing date of February 12, rather than February 19, 2015.

### CONCLUSIONS OF LAW

1. The Department's call center incorrectly interfered with the petitioner's attempt to apply for FS on February 12, 2015.
2. The petitioner shall be given a constructive FS filing date of February 12, 2015.

**THEREFORE, it is**

### ORDERED

That the petition is remanded to the Department with instructions to re-determine the petitioner's FS allotment for February 2015, by using a filing date of February 12, rather than February 19, 2015. Appropriate supplemental benefits shall be issued within 10 days of the date 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 30th day of March, 2015

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\sNancy J. Gagnon  
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 30, 2015.

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