



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/165656

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 21, 2015, 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 May 19, 2015, at Milwaukee, Wisconsin.

The Petitioner submitted additional documents consisting of a statement from his a daughter (Exhibit 3) and letter from an auto repair shop (Exhibit 4) that were added to the record on May 19, 2015, after the hearing. The agency had no objection.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly denied the Petitioner FoodShare benefits for March 2014.

There appeared at that time and place 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: Simone Johnson, HSPC Sr.  
Milwaukee Enrollment Services  
1220 W. Vliet St., Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is currently in New Mexico.
2. On December 22, 2014, the agency sent the Petitioner a notice, reminding him that he would be receiving a Six Month Report Form (SMRF) within the next 30-days and that he needed to complete

- the form to continue receiving benefits. The notice was sent to the Petitioner's correct address on S. 16<sup>th</sup> Street. (Exhibit 2, pgs. 23-37)
3. The Petitioner left Wisconsin in January, after the Christmas Holiday and has not returned. He does not anticipate returning to Wisconsin, until Father's Day – June 21, 2015. (Testimony of Petitioner)
  4. Petitioner's daughter retrieves and goes through the Petitioner's mail from the South 16<sup>th</sup> Street address and forwards the mail to the Petitioner. (Testimony of the Petitioner; Exhibit 3)
  5. On January 19, 2015, the agency sent the Petitioner a SMRF Form to complete. The instructions advised the Petitioner that the form needed to be returned by February 5, 2015. The SMRF was sent to the Petitioner at the correct address on South 16<sup>th</sup> Street. (Exhibit 2, pgs. 25-13)
  6. On February 16, 2015, the agency sent the Petitioner a notice advising him that his FoodShare benefits would be ending effective March 1, 2015, because he did not complete the SMRF form. The notice further advised the Petitioner that he needed to complete the form by the end of February if he did not want his benefits to end. This notice was sent to the Petitioner's correct address on South 16<sup>th</sup> Street. (Exhibit 2, pgs. 28-41)
  7. On February 24, 2015, the Petitioner called the agency to inquire about how to file a SMRF. (Exhibit 2, pg. 16)
  8. On February 25, 2015, the agency sent the Petitioner a Notice of Proof Needed, requesting verification of his Wisconsin residency, because it noticed that his benefits had been used exclusively outside of Wisconsin in recent month. The Notice indicated that the verification was due by March 6, 2015. The Notice was sent to the correct address on South 16<sup>th</sup> Street. (Exhibit 2, pgs. 42-45)
  9. February 27, 2015, the Petitioner called the agency to see if it had received his SMRF. The agency indicated that it had not. (Exhibit 2, pg. 16)
  10. The Petitioner did not provide the requested proof of residency, but the agency took no action. (Testimony of Ms. Johnson; Exhibit 2, pg. 16)
  11. On March 9, 2015, the Petitioner called the agency to see if it received his SMRF and was informed that the agency did not get the SMRF. Consequently, the agency processed a renewal / new application for the Petitioner. (Exhibit 2, pg. 16)
  12. On March 10, 2015, the agency issued a notice of proof needed requesting verification of self-employment income from a rental property. The verification was due March 19, 2015. The agency sent the notice to the Petitioner's correct address on South 16<sup>th</sup> Street. (Exhibit 2, pgs. 46-49)
  13. There was some issue with Petitioner's ability to obtain the Self Employment Verification of Income forms, so they were not submitted to the agency until April 1, 2015. The agency took no action, upon receipt of the verification. (Exhibit 2, pg.16; Testimony of the Petitioner)
  14. The agency did not send the Petitioner a notice advising him that the application he filed on March 9, 2015 was denied. (Testimony of Ms. Johnson; Exhibit 2, pg. 1)
  15. The Petitioner applied for and received food stamps in New Mexico, beginning April 1, 2015. (Testimony of Petitioner)
  16. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 21, 2015. (Exhibit 1)

### **DISCUSSION**

With regard to the closure of Petitioner's FoodShare case, effective March 1, 2015, the agency acted correctly.

“Food units certified for 12 months, and subject to reduced change reporting requirements, are required to submit a six-month report from (SMRF) in the six month of the certification period...To be considered timely, a SMRF must be returned to the local agency by the 5<sup>th</sup> day of the process month (month 6). If the [household] fails to return a timely SMRF, FoodShare will close effective the last day of the process month...” *FoodShare Wisconsin Handbook (FSH) §6.1.2*

In the case at hand, the Petitioner needed to complete and return a SMRF by February 28, 2015. He did not do so. As such, the agency correctly ended his FoodShare benefits effective March 1, 2015.

With regard to Petitioner's new application for benefits, the agency had some missteps.

The Petitioner filed a new application/renewal for benefits on March 9, 2015. The agency subsequently sent the Petitioner a request for verification of his self-employment income on March 10, 2015. However, it did not give him ten days to provide verification; it only gave him until March 19, 2015. "The local agency must give food units at least 10 days to provide required verification." *FSH §1.2.1;7 CFR 273.2(c)(5)* As such, the agency cannot now deny the Petitioner benefits for failing to provide timely verification of his income.

Further, the agency took no action when it did receive the Petitioner's verification on April 1, 2015. If it intended to deny the Petitioner's application, it needed to send the Petitioner adequate notice of that action, meaning the noticed needed to include:

1. A statement describing the intended action.
2. The reason(s) for the intended action, including a citation to the law, regulation, rule or policy that supports or requires the action.
3. An explanation of the right to an agency conference and/or a hearing and how to request one.
4. The client's rights and responsibility in the hearing process.
5. A Statement on the availability of free representation.
6. A statement that; if a hearing is requested before the action's effective date, benefits will continue until the hearing decision is made...
7. A statement that the client may have to repay any benefits continued during the appeal, if the hearing decision isn't in the client's favor or s/he abandons or withdraws the hearing request...
8. The telephone number and, when possible, the name of an agency staff person to contact for more information.

"Each client has the right to adequate and timely notice of adverse action." *Income Maintenance Manual (IMM)§§ 3.2.1 and 3.2.2; see also FSH §1.2.1.2* (It should be noted that per *IMM §3.2.3* this case was exempt from timely notice requirements, because the Petitioner applied for and received benefits in New Mexico. However, the agency still had to provide adequate notice.)

Based upon the foregoing, the agency will have accept the Petitioner's April 1<sup>st</sup> submission of verification, process the application and properly issue him a notice indicating whether his application for March benefits is accepted.

It should be noted that Petitioner's application for benefits will likely be denied. Under *FSH §3.2.1.2* an absent individual may only be included in a household, if his absence is expected to be no longer than two, full, consecutive months. By March 9, 2015, the Petitioner had been out of Wisconsin for more than two, full, consecutive months. As such, for FoodShare purposes, the Petitioner was no longer considered to be residing in or temporarily absent from Wisconsin, which would make him ineligible for FoodShare benefits in Wisconsin. See *FSH §3.2.1* This is true, no matter what caused the Petitioner's absence.

### **CONCLUSIONS OF LAW**

- 1) The agency correctly ended the Petitioner's benefits effective March 1, 2015, for failure to timely complete a SMRF.
- 2) The agency did not take the correct steps to deny the Petitioner's March 9, 2015 application for benefits, because it did not give him 10 days to provide verification and because it did not provide adequate notice to the Petitioner of its decision to deny his March 9, 2015 application for benefits.

**THEREFORE, it is**

**ORDERED**

That the agency re-evaluate the Petitioner's eligibility for FoodShare benefits for the month of March 2015 and that the agency issue to the Petitioner written notice of its decision. The agency shall take all administrative steps to complete this task within ten-days of this decision.

In all other respects, the petition 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 22nd day of May, 2015.

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\sMayumi M. Ishii  
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 May 22, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability