



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/169805

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 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 November 24, 2015, at Milwaukee, Wisconsin. Post hearing the petitioner submitted pay stubs.

The issue for determination is whether the respondent correctly determined petitioner's FS allotment 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: 
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. The petitioner is an ongoing FoodShare recipient who was employed by , a temporary staffing agency.

3. The petitioner reported to the agency, via an Employer Verification Form dated October 6, 2015, her employment income. Based upon this information petitioner's FS allotment was reduced to \$16.00 effective November, 2015.
4. Petitioner testified that her employment through [REDACTED] terminated on November 16, 2015.

DISCUSSION

FoodShare rules hold that “[f]or reported changes that result in a decrease in benefits, process the change to allow for adequate negative notice to be issued to the customer. If verifications are not received within 10 days, and the FS case is not closed for at least one day, make the change effective the first of the month following the month verifications are received.” *FoodShare Wisconsin Handbook*, § 6.1.3.3.; see also, 7 CFR 273.12.

The petitioner argued that the [REDACTED] information was incorrect, and testified at hearing that she is no longer employed through [REDACTED] as of November 16, 2015. [REDACTED] reported on the Employer Verification Form that petitioner worked 40 hours per week, and earned \$9.00 per hour. Petitioner testified that she did not work 40 hours weekly; however, she did not testify with any specificity regarding her [REDACTED] employment hours, only stating that 40 hours weekly was not correct. Without a specific indication of the hours worked, it is difficult for me to conclude that the respondent erred in its determination. This is especially true where the respondent has requested and has received written confirmation from an employer. The petitioner did provide pay stubs post-hearing, but those were dated after the [REDACTED] verification form, and were not available to the respondent prior to making its determination.

I sympathize with the petitioner but have no power to grant her request for additional FS benefits. Administrative law judges lack equitable powers that would allow them to consider the fairness of the situation. Rather, they must apply the law as it is written. FoodShare rules do not allow additional benefits until the month after the recipient reports a change in income. Therefore, although I understand why the petitioner believes she is entitled to an increased FoodShare, I have no power to grant her request. As she is no longer employed through [REDACTED], and she notified the respondent of that fact at hearing, her benefits going forward should reflect that change in income commencing in December, 2015.

CONCLUSIONS OF LAW

The petitioner is not entitled to additional FoodShare prior to December 1, 2015, because she reported the change in her income in November, 2015.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 Madison,
Wisconsin, this 22nd day of December, 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 December 22, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability