



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOO - 205248

PRELIMINARY RECITALS

Pursuant to a petition filed on May 13, 2022, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Human Services Department (“the agency”) regarding FoodShare benefits (FS), a hearing was held on June 14, 2022, by teleconference initiated from Madison, WI.

The issue for determination is whether the agency properly terminated Petitioner’s FS eligibility effective May 31, 2022 because he resides in a drug and alcohol treatment facility and has no authorized representative employed by that facility.

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, WI 53703

By: Melissa Genz

Rock County Human Services Department
1900 Center Avenue
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is homeless and since late April 2022 has been living in a residential facility located at [REDACTED] where he receives

- treatment for dual diagnoses of [REDACTED]. He was previously homeless and residing in Milwaukee County.
2. The facility where Petitioner resides is a community substance abuse program certified by the State pursuant to Wis. Admin. Code DHS §75.03.
 3. On May 6, 2022, Petitioner contacted the South Central Consortium to update his mailing address to [REDACTED].
 4. By letter dated May 9, 2022, the agency informed Petitioner that his FoodShare benefits would close on May 31, 2022. The letter further stated: “you are not eligible for FoodShare when living at [REDACTED]. Your meals are provided for you.”
 5. In addition to issuing the above-referenced letter on May 9, 2022, the agency issued an “About Your Benefits” notice that reiterated the impending closure of his FS and inaccurately stated that he “did not ask for this benefit.”
 6. No staff member from the facility where Petitioner currently stays has agreed to serve as an authorized representative for Petitioner. This was the actual reason for the agency’s decision to terminate Petitioner’s FS benefit.
 7. Petitioner filed an appeal.

DISCUSSION

The issue in dispute is whether Petitioner can receive FS while staying at the facility where is currently residing and receiving mental health and substance abuse treatment services. The federal regulations that govern state nutrition assistance programs including Wisconsin’s FoodShare Program provide, in relevant part, as follows:

(e) Residents of drug and alcohol treatment and rehabilitation programs.

(1) Narcotic addicts or alcoholics who regularly participate in publicly operated or private non-profit drug addict or alcoholic treatment rehabilitation programs (DAA treatment centers) on a resident basis may voluntarily apply for SNAP. Applications must be made through an authorized representative who is employed by the DAA treatment center and designated by the center for that purpose. The State agency may require the household to designate the DAA treatment center as its authorized representative for the purpose of receiving and using an allotment on behalf of the household. Residents must be certified as one-person households unless their children are living with them, in which case their children must be included in the household with the parent.

(2)

(i) Prior to certifying any residents for SNAP, the State agency must verify that the DAA treatment center is authorized by FNS as a retailer in accordance with § 278.1(e) of this chapter or that it comes under part B of title XIX of the Public Health Service Act, 42 U.S.C. 300x *et seq.*, (as defined in “Drug addiction or alcoholic treatment and rehabilitation program” in § 271.2 of this chapter).

(ii) Except as otherwise provided in this paragraph (e)(2), the State agency must certify residents of DAA treatment centers by using the same provisions that apply to all other households, including, but not limited to, the same rights to notices of adverse action and fair hearings.

7 C.F.R. §273.11(e)

Consistent with that federal regulation, state FoodShare policy provides:

Residential alcohol and drug treatment facilities are defined as: private facilities, nonprofit organizations or institutions, community-based residential facilities, hospitals, or publicly operated community mental health facilities. These facilities are not institutions.

The Department of Health Services certifies these facilities according to DHS 75.03 General requirements. State certification of these facilities should not be confused with state licensing of drug and alcohol treatment facilities. Such licensing is not required for FoodShare eligibility.

For an individual of a residential treatment facility to be certified to receive and use their FoodShare benefits to purchase meals, the facility must either be:

1. Tax exempt and certified by the State as either receiving or, eligible to receive, or operating to further the purposes of Part B of Title XIX (Medicaid). This may include faith-based treatment, facilities; or
2. Authorized as a retailer by FNS.

Title XIX [list of facilities for substance abuse](#) and for *mental health*.

An individual residing in a treatment facility may **voluntarily** apply for FoodShare. *If an individual will be using FoodShare to purchase meals, the facility or an employee of the facility must be designated as an authorized representative* with the F-10126B (scroll through the forms and select F-10126B) Appoint, Change, or Remove an Authorized Representative: Organization form. The authorized representative must apply on the individual's behalf (see [2.1.3.3 USE OF AN AUTHORIZED REPRESENTATIVE](#)).

If the individual is the primary person on an existing case, the facility or employee will need to be added as an authorized representative. . .

[Italicized emphasis added.] *FoodShare Wisconsin Policy Handbook* Sec. 3.2.1.5.3.

The agency representative contended that although Petitioner resides in a residential drug and alcohol treatment facility governed by the above-referenced policy, he is not eligible to receive FS because the facility is unwilling to provide an authorized representative. The two notices that the agency sent to Petitioner regarding the termination of his FS did not identify that as the reason for the termination of Petitioner's FS benefit. Despite the agency's failure to provide accurate written notice to Petitioner of the reason for the termination of his FS, the agency representative at hearing explained the actual reason and that reason was consistent with the above-referenced federal regulation and policy. I will therefore uphold the agency's action.

If Petitioner discovers that the facility is willing to serve as an authorized representative, he may wish to take note of the rehearing process described in detail below and to provide proof of the agency's willingness to do so.

Finally, I note that Petitioner argued that he only intended to notify the agency that his mailing address had changed and that he does not intend to remain in Rock County. An agency is however required to act on changes in FS household circumstances that it learns of even if the recipient was not required to report the change. See *FoodShare Wisconsin Policy Handbook* Sec. 6.1.1. Once the agency here learned that

Petitioner was staying at a drug and alcohol treatment facility, it had an obligation to apply the relevant policy.

CONCLUSIONS OF LAW

The agency properly terminated Petitioner's FS benefit as of June 1, 2022 because he is residing in a drug and alcohol treatment facility that is unwilling to serve as an authorized representative.

THEREFORE, it is ORDERED

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, 4822 Madison Yards Way, 5th Floor North, 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

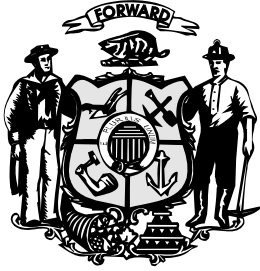
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 8th day of July, 2022



\s _____
Teresa A. Perez
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 July 8, 2022.

Rock Cty Human Services
Division of Health Care Access and Accountability