



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/170022

PRELIMINARY RECITALS

Pursuant to a petition filed November 07, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), hearings were held on December 15, 2016 and January 19, 2016, via telephone at Racine, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's FS eligibility and FS allotment.

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: Madeline Rice

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Racine County.
2. On April 27, 2015, the Petitioner applied for FS benefits. The Petitioner's household size is five, including her husband AN. The Petitioner submitted pay statements showing earned income from

██████████ of \$284.10 for March 29, 2015 – April 11, 2015 and \$223.28 for March 15 – 28, 2015.

3. On August 10, 2015, the system performed an auto-update with regard to AN’s ██████████ benefits. AN’s last ██████████ benefits check was on July 20, 2015.

4. According to the federal data wage match, Petitioner’s husband AN earned the following actual wages from ██████████:

Paydate	Hours worked	Gross Wages
7/31/2015	54 hours	\$797.40
8/7/2015	45 hours	\$690.81
8/14/2015	42 hours	\$655.28
8/21/2015	41 hours	\$643.44

Total gross wages for AN from ██████████ for 7/31/2015 – 8/21/2015 was \$2786.93.

5. On August 17, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would end effective September 1, 2015 due to household income exceeding the program’s income limit. This notice indicated that the agency determination was based on earned income for the Petitioner of \$545.43/month from ██████████, \$2,249.29/month for AN from ██████████. The notice also showed that AN was receiving \$370/week in ██████████ benefits but the agency did not budget those payments based on the update on August 10, 2015. The agency also budgeted a mortgage expense of \$716/month and utility expenses. The agency determined that the Petitioner’s gross household income was \$4,385.72/month and counted income was \$3,633.78/month which exceeded the program limit of \$2,326.

6. On August 27, 2015, September 4, 2015 and September 11, 2015, the Petitioner contacted the agency. Petitioner reported that AN was not receiving both ██████████ benefits and earned income. The agency worker updated the case and verified AN’s wages with the Petitioner based on the federal data match. Petitioner stated that wages per the data match were accurate.

7. On August 28, 2015, the agency issued a Notice of Decision to the Petitioner informing her that FS benefits would be discontinued September 1, 2015 due to income exceeding the program limit. This notice indicated that the agency determination was based on earned income for the Petitioner of \$545.43/month from ██████████ and \$696.73/week for AN from ██████████. Total gross household income was determined to be \$3,541.37/month and counted income was \$2,640.10/month which exceeded the program limit of \$2,326.

8. On September 1, 2015, Petitioner’s FS benefit case closed.

9. On October 26, 2015, the Petitioner contacted the agency about the FS case. Petitioner was advised to re-apply because the FS case had been closed for more than 30 days.

10. On October 27, 2015, a new FS application was processed for the Petitioner. The agency issued a Notice of Proof Needed to the Petitioner informing her that the agency required verification of employment and income information for the Petitioner from ██████████ and employment and income information for AN from ██████████. The information was due by November 25, 2015.

11. On October 27, 2015, the agency received two pay statements for Petitioner from [REDACTED]. Petitioner's actual wages were as follows:

Pay Period	Wages
9/13 – 9/26/2015	\$337.45
9/27 – 10/10/2015	<u>\$341.40</u>
	\$678.85

12. On October 29, 2015 and November 5, 2015, the agency issued Notices of Proof Needed to the Petitioner informing her that the agency also required [REDACTED] verification for AN. The information was due by November 25, 2015.
13. AN received [REDACTED] benefits of \$294 on October 26, 2015 and \$370 on November 2, 2015. AN returned to work at [REDACTED] on November 2, 2015.
14. On November 7, 2015, the Petitioner filed an appeal.
15. On November 9, 2015, the agency received an employer verification from [REDACTED] for AN. [REDACTED] reported that AN works 40 hours/week at \$15.04/hour. His start date with [REDACTED] was May 2, 2011.
16. On November 12, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her application for FS benefits of October 26, 2015 was denied due to income exceeding the program limit. The notice indicates that the agency determination was based on the following income:

October 2015	November 2015
\$338.93/every other week from [REDACTED]	\$338.93/every other week from [REDACTED]
\$1,813.80/week from [REDACTED]	\$2,415.40/week from [REDACTED]
\$1,436.97/month from [REDACTED]	
\$1,813.50/month from [REDACTED]	
\$294/month from UC	\$294/month from UC

The agency calculated gross monthly household income of \$4,273.17 for October, 2015 and \$3,609.58 for November, 2015. The agency budgeted a mortgage expense of \$694/month plus utilities. Counted income was determined to be \$3,280.34 for October, 2015 and \$2,749.47 for November, 2015. The counted income limit is \$2,368.

17. On November 18, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her application for FS benefits of October 26, 2015 was approved. She was informed that she would receive \$21 in FS benefits for October, 2015 and \$200/month effective November 1, 2015. The notice indicates that this determination was based on the following income:

October, 2015	November, 2015
\$338.93/every other week from [REDACTED]	\$338.93/every other week from [REDACTED]
\$1813.80 from [REDACTED]	\$3,481.17/month beginning November, 2015
\$1,938.80 for October, 2015 only	

\$294 for UC benefits

\$73.50/week for UC benefits

The notice indicates that gross household income for October was \$2961.50 and counted income was \$2,194.50. Gross household income for November was \$3,712.12 and counted income was \$1,901.86.

18. On November 20, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be \$30 for October, 2015 and decrease to \$34/month effective January 1, 2016. The agency issued a \$9 supplement to the Petitioner for October, 2015. The notice indicates that this determination was based on the following income:

November, 2015	December, 2015
\$338.93/every other week from [REDACTED]	\$338.93/every other week from [REDACTED]
\$601.60/week from [REDACTED]	\$601.60/week from [REDACTED]
\$370 from UC	

**DISCUSSION**

In determining a Petitioner’s eligibility and allotment for FS benefits, the agency must budget all of the recipient’s nonexempt income, including earned and unearned income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently was \$193 per month for a five-person household through September 30, 2015 and \$197 per month effective October 1, 2015. 7 C.F.R. §273.9(d)(1); FoodShare Handbook (FSH), §§ 4.6.2 and 8.1.3. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FSH, § 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FSH, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH, § 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FSH, § 4.6.7.

In this case, the Petitioner filed an appeal for a review of the agency’s determination to discontinue benefits effective September 1, 2015 as well as the agency’s determination of benefits for October, 2015 – January, 2016.

**Agency Determination Effective September 1, 2015**

On August 10, 2015, the agency received an alert that the Petitioner’s case had been updated automatically through a data exchange to reflect that AN was no longer receiving [REDACTED] benefits. The agency determined through the federal data wage match that AN was now working and receiving earned income. The case was updated to reflect current household income based on income reported by the Petitioner at the time of application for her job at [REDACTED] and the wages for AN as reflected in the federal data wage match system. Because both the Petitioner’s and AN’s income fluctuates, the agency averaged the monthly income for each. This averaging of fluctuating income is allowed pursuant to the FSH, § 1.2.4.2.

The agency determined the Petitioner’s average monthly income from [REDACTED] was \$545.43 (\$223.28 + \$284.10 = 507.38/4 = \$125.85/week x 4.3 weeks = \$545.43/month).

The agency determined AN’s average monthly income from [REDACTED] was \$2,995.94. (Actual wages of \$2,786.93 for July and August/4 = \$696.73/week x 4.3 weeks = 2,995.94).

The agency determined total gross household income to be \$3,541.37.

The Notice of Decision from August 17, 2015 incorrectly included earned income and [REDACTED] benefits for AN in determining eligibility. The agency updated the case and issued a revised Notice on August 28, 2015.

The agency applied the standard deduction of \$193 and an earned income deduction of \$708.27 for an adjusted income of \$2,640.10/month. The agency properly determined that the Petitioner's household had no excess shelter costs based on mortgage of \$716 and utility standard of \$446. The net income limit for FS eligibility was \$2,326/month for a household of five. The maximum FS allotment for a household of five is \$771/month. Because 30% of Petitioner's net adjusted income was \$792 which is more than the maximum allotment allowed, the Petitioner's household was not eligible for benefits in September, 2015.

At the hearing, the Petitioner testified that she believed the agency was continuing to count both AN's earned income and [REDACTED] benefits. Though the agency did incorrectly include [REDACTED] benefits initially, this was corrected as evidenced by the August 28 notice. The income that was counted by the agency was correctly determined based on the Petitioner's pay statements and the federal data watch match for AN's earned income. [REDACTED] was not counted in determining eligibility effective September 1, 2015.

Based on the information and evidence provided, I conclude that the agency properly discontinued the Petitioner's FS benefits effective September 1, 2015 due to household income exceeding program limits.

#### **Agency Determinations for October, 2015 – January, 2016**

The notices issued by the agency in November contained inaccuracies with regard to the Petitioner's income. By the time of the hearings, the agency testified to clarify how it determined the Petitioner's benefits.

The agency determined the Petitioner's earned income based on the pay statements of September and October as noted in Finding of Fact # 11. The Petitioner's monthly earned income from [REDACTED] was budgeted by the agency as \$728.70/month (\$338.93/every other week or \$169.47/week x 4.3 weeks). Though I was not able to replicate the agency's calculations, the difference is not significant and does not impact the benefit determination. Specifically, I concluded that the Petitioner's monthly income based on the pay statements is \$729.76/month ( $\$678.85/4 = 169.71/\text{week} \times 4.3 \text{ weeks}$ ).

For October, the agency included [REDACTED] benefits of \$294 for AN as well as earned income of \$1813.80. This was based on the employer verification from [REDACTED] reporting that AN works 40 hours/week at \$15.04 for a weekly income of \$601.60. The agency prorated this for October because AN was laid off near the end of the month.

I reviewed the agency's final budget screen for October, 2015 and conclude that the agency properly budgeted monthly gross income of \$2,836.50 for the household ( $\$728.70 + \$294 + \$1813.60$ ). The agency properly applied an earned income deduction of \$508.50 and standard deduction of \$197 for adjusted income of \$2,131. The agency budgeted shelter costs of \$694 and the utility standard of \$458 for an excess shelter deduction of \$86.50. This resulted in counted income of \$2,044 and a FS allotment for October of \$157. Because the Petitioner filed her application on October 26, 2015, the benefit was prorated at \$30 for October, 2015. I conclude that the agency properly determined these benefits.

For November, 2015, the agency budgeted monthly gross income of \$3,685.58 which included \$728.70 from [REDACTED] + \$370 in UC benefits + \$2,586.88 from [REDACTED] ( $\$601.60/\text{week} \times 4.3 \text{ weeks}$ ). The

agency applied an earned income deduction of \$663.11 and standard deduction of \$197 for adjusted income of \$2,825.47. The household was not eligible for an excess shelter deduction. The net adjusted income of \$2,825.47. The maximum FS allotment for a household of five is \$771/month. Because 30% of the Petitioner's net adjusted income was \$847.50 and exceeded the maximum allotment of \$771, the household was not eligible for FS benefits in November, 2015.

In December, the agency budgeted gross monthly household income of \$3,315.58 which included \$728.70 from [REDACTED] and \$2,586.88 from [REDACTED]. The agency applied an earned income deduction of \$663.11 and standard deduction of \$197 for net adjusted income of \$2,455.47. The household was not eligible for an excess shelter deduction. The maximum allotment for a household of five is \$771. Because 30% of the net adjusted income is \$736.50, the Petitioner is entitled to receive FS benefits of \$34 (\$771 - \$737) effective December 1, 2015.

It is not clear from the evidence what amount of FS benefits were actually issued to the Petitioner in November and December, 2015. I conclude that the final determinations of the agency as testified to at the hearing are accurate based on the information provided. Specifically, I conclude that the agency's determinations that the Petitioner's household was entitled to FS benefits of \$30 for October, 2015, \$0 for November, 2015 and \$34/month effective December 1, 2015 are accurate.

The Petitioner presented no evidence to refute the agency's final budget determinations or to refute the income information provided by the Petitioner's and AN's employers.

### CONCLUSIONS OF LAW

1. The agency properly terminated the Petitioner's FS benefits effective September 1, 2015 due to income exceeding program limits.
2. The agency properly determined the Petitioner's FS benefits for October and November, 2015 and properly determined benefits effective December 1, 2015.

**THEREFORE, it is**

**ORDERED**

That 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 Milwaukee,  
Wisconsin, this 16th day of February, 2016

---

\sDebra Bursinger  
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 February 16, 2016.

Racine County Department of Human Services  
Division of Health Care Access and Accountability