



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/170125

PRELIMINARY RECITALS

Pursuant to a petition filed November 16, 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 telephonic hearing was held on December 15, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly terminated petitioner's FS effective November 1 (through November 15, 2015) due to being over the income limit.

Based upon the agreement of the parties, no issue remains for determination by this administrative law judge as to the sufficiency of petitioner's FS effective November 16, 2015.

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: Jose Silvestre, IM Spec. Adv.  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 24, 2015 the petitioner called the agency to request more hours for her child care benefits. See Exhibit 5. At that time she reported new employment and the agency budgeted the new earned income associated with that new employment for her FS, for a total household income of \$2558.50.
3. On September 24, 2015 the agency issued a notice of decision to petitioner stating that effective November 1, 2015 her FS would end because she was over the income limit for her household of 3.
4. On November 16, 2015 the petitioner contacted the agency and reported that her hours of employment had decreased and reapplied for FS.

**DISCUSSION**

1. November 1-15, 2015.

In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. § 273.9(b). From the gross household income, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6.1 are allowed: a standard deduction, an earned income deduction, a medical expenses deduction, a child support payment deduction, a dependent care expense deduction, and a shelter expense deduction. Some FS groups are not allowed a deduction for some expenses and some expenses are not always deducted in full. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

The agency presented the budget to show how it ultimately calculated her household's income for November. See Exhibit 4. The agency also showed the information documenting the income it used. See Exhibits 1-3. The petitioner stated that the agency's calculations were not correct because for the [REDACTED] employer she was earning \$8.00/hr, not \$8.50.

There is no dispute that petitioner reported a change in household income on November 16, 2015. This was after her FS case had closed. There is no evidence that she reported the change prior to that time. According to FS policy, all reported changes that cause an increase in the FS benefit including person additions, increases in expenses, etc., **will be effective the first of the month following the report month** if required verifications are received within 10 days of the request for verification. *FS Handbook*, §6.1.3.3(emphasis added); 7 CFR 273.12(c)(1). Thus, if she reported the change in November, it should affect her FS for December, so long as she provided the needed verifications, which will be addressed in the stipulation discussed below. Further, the agency was using the best evidence available to determine her FS for November. See *FS Handbook*, §1.2.4.2. Finally, even if the agency used the \$8.00/hr figure, she still would have been over the income limit. I must find the agency acted correctly here in terminating her FS effective November 1, 2015 due to being over the income limit of \$1675 for a household of 3. See *FS Handbook*, §8.1.1.

2. November 16, 2015 and ongoing.

At hearing the agency's representative and petitioner discussed the items of concern in petitioner's appeal. One of those issues was her reapplication for FS effective November 16. Following that discussion, the parties agreed that if, and only if, the petitioner provided the agency with a letter regarding her employment at [REDACTED] and verified her last 30 days of wages from the day care employer by December 28, 2015, that the agency would take the administrative steps necessary to redetermine petitioner's FS effective November 16, 2015, issue any FS accordingly, and issue a notice of decision

regarding that action. Therefore, that issue is resolved and requires no further action by this administrative law judge.

### CONCLUSIONS OF LAW

1. That the agency correctly terminated petitioner's FS effective November 1 through November 15, 2015 due to being over the income limit.
2. That, based upon the agreement of the parties, no issue remains for determination by this administrative law judge regarding petitioner's FS effective November 16, 2015 and ongoing.

**THEREFORE, it is**

**ORDERED**

That if, and only if, the petitioner provided the agency with a letter regarding her employment at [REDACTED] and verified her last 30 days of wages from the day care employer by December 28, 2015, then the agency shall take the administrative steps necessary to redetermine petitioner's FS effective November 16, 2015, issue any FS accordingly, and issue a notice of decision regarding that action. These actions shall be completed within 10 days of the date of this Decision. In all other respects, the petition herein 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**

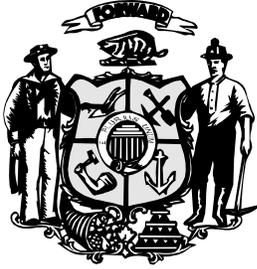
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 8th day of January, 2016

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\sKelly Cochrane  
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 January 8, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability