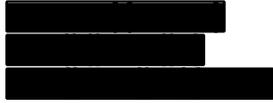




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



FOO/171028

PRELIMINARY RECITALS

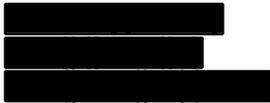
Pursuant to a petition filed December 28, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 02, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner’s case was correctly closed because of income in excess of FoodShare income limits.

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:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Milwaukee County.
2. Petitioner and her now ex-husband operated a small law firm. Some of the work done by the firm included bankruptcy cases.
3. Petitioner’s law firm dissolved in 2014 but Petitioner was still owed legal fees paid by her bankruptcy clients. These fees were paid by the clients to 1 of 2 bankruptcy court trustees as part

of the debt repayment plan worked out through the bankruptcy proceedings. The clients have five years under Chapter 13 of the bankruptcy code to make the payments. Each trustee has been sending Petitioner 1 check per month.

4. In November 2015 petitioner contacted the agency and reported receiving two checks from the bankruptcy trustees totaling \$3067.76. The reason the amount was this high was because one or more clients paid their bill early and in full. The agency concluded that this income was Petitioner's regular monthly income and closed her FoodShare case effective January 21, 2016 because of gross income in excess of FoodShare income limits.
5. The average monthly repayment from the bankruptcy clients of Petitioner over the period of June 2015 through January 2016 was \$1204.42.
6. The outstanding balance of fees to be paid to Petitioner by clients through the Chapter 13 repayment plans is about \$6000.00 over the next 2 years.

DISCUSSION

The categorical income limits for a FoodShare household of 1 is \$1962.00 and for 2 it is \$2656.00. *FoodShare Wisconsin Handbook, §8.1.1.*

While 30 days of income is typically sufficient to be an indicator of income available to a household, if income fluctuates an average is used:

You may use income received during the last 30 days as an indicator of the income that is and will be available to the household during the certification period, unless that income does not accurately reflect changes in income that have occurred or are anticipated to occur.

...

If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. To average widely fluctuating income, use the household's anticipated income including fluctuations anticipated over the certification period. In any case, make every attempt to accurately verify prospective income and clearly document the reasoning for the prospective income estimate.

FoodShare Wisconsin Handbook, §1.2.4.2.

The circumstances here are unique. I conclude that Petitioner's case was incorrectly closed based on the November checks. Her income fluctuates; indeed, other than November 2015 her highest monthly income in the other 6 months before the case closure was \$1828.51 and the lowest was \$421.61. The January 2016 amount was \$239.30.

I also note that the agency has treated the checks recovered by Petitioner as unearned income. It seems to me that this is earned income – fees earned by Petitioner for work she performed but paid in installments. The agency must determine whether Petitioner is entitled to the earned income deduction in determining her FoodShare allotment. Finally, the agency must also determine Petitioner's household size – testimony at the hearing was confusing as to that issue as a daughter is at boarding school and it was not clear if she is included in the FoodShare household or not.

CONCLUSIONS OF LAW

That Petitioner's FoodShare case was incorrectly closed because of income in excess of FoodShare income limits

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions to reverse the case closure that was effective January 2016. This must be done within 10 days of the date of this decision. In determining Petitioner's FoodShare allotment the agency must average the income from the bankruptcy trustees, consider whether Petitioner's income is earned and whether household composition is correct.

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 19th day of February, 2016

\sDavid D. Fleming
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 February 19, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability