



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/173543

PRELIMINARY RECITALS

Pursuant to a petition filed April 08, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on April 28, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's FS benefits effective April 1, 2016.

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: [Redacted]
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Waukesha County. Petitioner's household size for purposes of FS is two.
2. On March 24, 2016, the Petitioner completed a FS renewal. She reported new employment starting March 9, 2016 at [Redacted]. A letter from the employer dated March

- 15, 2016 reported that the Petitioner was working 35-40 hours/week @ \$10 – 12/hour with hours varying each pay period. It reported that she is paid biweekly.
3. Petitioner received her first paycheck on March 25, 2016.
  4. On March 28, 2016, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be \$16/month effective April 1, 2016. This was based on gross earned income of \$2,110.75 for April, 2016 and \$1,773.75 for May, 2016, rent expense of \$140/month and utility expenses.
  5. On April 4, 2016, the Petitioner’s employer completed an Employer Verification of Earnings reporting that the Petitioner works 25-30 hours/week at \$10/hour.
  6. On April 6, 2016, the Petitioner contacted the agency to report that she was working fewer hours.
  7. On April 7, 2016, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of employment and income information with a due date of April 15, 2016.
  8. On April 15, 2016, the agency received one pay statement from the Petitioner for the pay period of March 20, 2016 – April 2, 2016. It showed the Petitioner worked regular hours of 45.50 @ \$10/hour. It also showed “other” pay of \$275.60. Gross earnings were \$948.30 for the pay period.
  9. On April 18, 2016, the agency issued a second Notice of Proof Needed to the Petitioner requesting clarification of income with a due date of April 22, 2016.
  10. On April 25, 2016, the agency issued a Notice of Decision to the Petitioner informing her that she would continue to get \$16/month in transitional FS benefits effective May 1, 2016. This was based on gross monthly earned income of \$1,773.75, rent of \$140/month and utility expenses.
  11. On April 8, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

In determining the amount of FS to be issued each month, 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 is \$152 per month for a one-person household. 7 C.F.R. §273.9(d)(1); FoodShare Handbook (FSH), § 4.6.2. 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.

The agency is required to verify a recipient’s income. For earned income, the agency uses income received during the previous 30 days as an indicator of the income that will be available to the food unit during the certification period. FSH, § 1.2.4.2. Sources for income verification can include pay statements from the last 30 days of pay or an employer’s verification.

If a recipient has changes in income that may cause an increase in benefits, any change in benefits is effective the first of the month following the date of the reported change if required verifications are received within 10 days of the request for verification. FSH, § 6.1.3.3 and 7 CFR 273.12(c)(1).

In this case, the Petitioner submitted a statement from her employer when she completed her renewal on March 24, 2016. That statement reported that the Petitioner would work an estimated 35-40 hours/week at \$10-12/hour. The Petitioner had not yet received a pay statement from her employer so the written

statement from the employer was the best information available to the agency at that time. Based on that information, the agency budgeted 37.5 hours/week @ \$11/hour for total gross monthly earned income of \$1,773.75 (37.5 hours/week x 4.3 weeks x \$11/hour). For April, 2016, the Petitioner also received a W-2 payment of \$337 resulting in gross income budgeted for April of \$2,110.75.

On April 4, 2016, the agency received a new employer verification, reducing the estimated hours and pay rate for the Petitioner. On April 6, 2016, the Petitioner contacted the agency to report the reduction in hours and she submitted her pay statement on April 15, 2016. All of these changes had the potential to increase her benefits which meant that once verification of the changes was received, her benefits for May 1, 2016 would be affected.

At the hearing, the Petitioner was advised that if verification of the changes was submitted, the agency would review the case for her May, 2016 benefits. Petitioner was advised that any new determination by the agency would result in new appeal rights.

Based on the information provided, I conclude the agency properly determined the Petitioner's FS benefits based on the information available to the agency. Specifically, the agency properly used an average of hours and pay rate based on the employer's verification submitted on March 24, 2016. The Petitioner agreed to provide additional verification of the changes in income which she reported in April, 2016 and the agency agreed to review the verifications for a determination of Petitioner's benefits beginning May, 2016.

### CONCLUSIONS OF LAW

The agency properly determined the Petitioner's FS benefits effective April 1, 2016.

**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 2nd day of June, 2016

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\sDebra Bursinger  
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 June 2, 2016.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability