



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/142746

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 20, 2012, by telephone. Hearings set for September 4, September 26, and December 4, 2012, were rescheduled at the petitioner's request.

The issue for determination is whether the county agency correctly discontinued the petitioner's FS effective August 1, 2012, due to excess income.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Michelle Vang, ES Spec.

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911 -5985

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Prior to August 2012, the petitioner had an ongoing FS case for a household of four persons. No adult in the household is elderly or disabled. The petitioner was duly notified that her case was

subject to a period review in July 2012. A telephone review was completed on July 10, 2012, followed by a timely request for income verification and an executed “signature page.”

3. On July 18, 2012, the Department issued written notice to the petitioner advising that her FS case would be discontinued effective August 1, 2012, because the review was not complete.
4. On July 18, 2012, the county agency received weekly paystubs (7/19, 6/26, 7/3, 7/10) for the petitioner’s husband from the Centralized Document Processing Unit (received two days earlier by CDPU). Following a clarifying voicemail message from the petitioner, the agency used 40 hours weekly at \$19.22 hourly in computing the household’s income (disregarding one-time overtime as anomalous). This amount of income put the household over the income limit for the FS program. The gross income calculation was \$19.22 x 40 hours = \$768.80 weekly x 4.3 weeks = \$3,305.84.
5. On July 23, 2012, the agency sent another notice to the petitioner advising that her FS case would remain closed effective August 1, 2012, due to excess income.
6. The petitioner reported a decrease in income to the agency in September 2012. The agency did not act on the change, because the FS case had been closed for more than 30 days.

DISCUSSION

The petitioner questions the correctness of the calculation of her FS allotment amount for August, 2012. The petitioner’s June and July 2012 gross income is not in dispute: the parties agreed that the household’s income was the \$19.22 hourly earned at [REDACTED]. The budgeting calculations here were performed prospectively. Prospective budgeting should reflect what the petitioner is *expected* to receive (based on recent past history), on average, each month. *FS Wisconsin Handbook (FSWH)*, 4.1.1, viewable online at www.emhandbooks.wisconsin.gov/fsh/. For earned income that is received biweekly, the agency is directed to develop a biweekly average, and then multiply that figure by 2.15 to account for three-paycheck months. For weekly income, the multiplier is 4.3. 7 C.F.R. §273.10(c)(2).

In calculating the petitioner’s August allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department’s *FS Wisconsin Handbook*. The federal rule requires that the county start with gross, rather than net, income, and allow only a limited number of identified deductions from that income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a case with four persons was set at \$155, per *FS Wisconsin Handbook*, 8.1.3. Twenty percent of any earned income is then subtracted as the Earned Income Deduction; that deduction was correctly given here. A Dependent Care Deduction is also taken if she incurs day care expenses in order to go to work, an Excess Medical Expense Deduction is subtracted for an elderly or disabled person’s allowable medical expenses that exceed \$35 per month, and child support paid out garners a deduction. There is no record of the latter three expenses here. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of that income. 7 C.F.R. §273.9(d)(6)(ii). Based on a \$675 shelter cost plus the \$444 heating utility standard, the petitioner’s shelter costs totaled \$1,119. This did not exceed half of the adjusted income (\$1,244), so no excess shelter deduction was deducted in the allotment calculation.

Thus, the August, 2012, allotment calculation correctly looked like this:

Gross income	3305.84
Minus Earned Inc. Deduction	661.16
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00

Minus Standard Deduction	<u>-155.00</u>
Adjusted Income	2489.68
Minus Shelter Deduction	<u>-000.00</u> (\$459 is the maximum)
Net Income	2489.68

The correct allotment for four persons with net income of \$2,489.68 was **zero** in August and September, 2012. *FS Wisconsin Handbook*, 8.1.2, p.22.

The petitioner may reapply for FS at any time. The petitioner also appealed from an action taken on her BadgerCare Plus case; that decision will be issued separately, as different rules apply.

CONCLUSIONS OF LAW

1. The agency correctly discontinued the petitioner’s FS effective August 1, 2012, due to excess income.

THEREFORE, it is ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 28th day of December, 2012

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 28, 2012.

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