



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

FOO/143052

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2012, 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 September 18, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in terminating FoodShare for petitioner due to an increase in her income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner had been receiving FoodShare ("FS") for her 3 -person household until August 2012.
3. On August 9, 2012, petitioner attended an in-person review at her county agency. She provided updated income information including pay stubs from the US Postal Service reflecting bi-weekly gross income of \$995.73 and \$886.09. The Department budgeted 925.06 of earned income for petitioner.
4. The Department also budgeted \$409.84 of child support received by petitioner for her two children.
5. On August 10, 2012, the Department issued a notice informing petitioner that her FS would be terminated effective September 1, 2012 due to her income being over the limit.
6. Petitioner filed a timely appeal.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$142 per month for a three person household. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin Handbook, Appendix 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); FoodShare Wisconsin Handbook, App. 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); FoodShare Wisconsin Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FoodShare Wisconsin Handbook, App. 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); FoodShare Wisconsin Handbook, App. 4.6.7.

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$147 per month for households with three people. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 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); FS Handbook, App. 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); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 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); FS Handbook, App. 4.6.7.

The gross income limit for a household of three prior to the latest release of the FS Handbook on September 18, 2012 was \$3,090. See *FS Handbook* §§ 4.2.1, 8.1.1. The net income limit for a household of three prior to September 18, 2012 was \$1,545. *FS Handbook*, App. 8.1.1.

Petitioner's household income is below the gross income limit. This is clear from the testimony & exhibits. The representative from the Department stated so during the hearing. Thus, she is categorically eligible for FS. After the earned income deduction and the standard deduction (there is no excess shelter deduction) petitioner's net income was \$1,988.88. See budget screen in exhibit #5. The record reflects that as of August 14, 2012, the Department updated the earned income from \$1,988.88 to \$1,964.43 based on petitioner's submission of additional pay stubs. This had no effect as the petitioner still failed the net income limit by nearly \$300. According to FS Handbook 8.1.2, the FS

allotment for a 3-person household with a net income over \$1,747 was zero. I cannot find an error in the calculations of the Department.

Petitioner asserted various other arguments including that she should be eligible for more FS if her unearned income were not counted. But, the Department was correct in counting the child support for both children as unearned income to the household. See *FS Handbook* § 4.3.4.2. She also voiced disagreement with the standard utility deduction, noting that different people have different expenses. I can only note that the rules of the program call for the application of the standard deduction under these circumstances. See *FS Handbook* § 4.6.7.3. The deduction is not a per case deduction based on a household's actual expenses. The Department did not err in its application of the standard allowance.

Finally, I note to petitioner that she may update her income report to the Department at any time. During the hearing, she claimed that the pay stubs used by the Department were not reflective of her usual income. If this is so, then she should provide more current pay stubs. But, the Department is obligated to use the most current verification provided by the petitioner. She provided the pay stubs to the agency. The agency did not err in using those to calculate her income.

CONCLUSIONS OF LAW

The Department did not err in terminating FS benefits as it appears that petitioner remains categorically eligible for FS but her allotment was zero.

THEREFORE, it is

ORDERED

That this matter 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 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, Room 651, 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 8th day of October, 2012

John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee Enrollment Services - email
Department of Health Services - email



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The preceding decision was sent to the following parties on October 8, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability