



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/143354

PRELIMINARY RECITALS

Pursuant to a petition filed August 22, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Oneida County Department of Social Services in regard to FoodShare benefits (FS), a telephone hearing was held on September 27, 2012, at Rhinelander, Wisconsin.

The issue for determination is whether the Department erred in terminating petitioner's FoodShare eligibility.

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: Amy Mayo

Oneida County Department of Social Services
Oneida Avenue
Rhinelander, WI 54501

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Oneida County.
2. Petitioner had previously been receiving FoodShare ("FS") since December 2011 for a 3 -person household. Her husband was reported to not live in the household.

3. On August 16, 2012 petitioner submitted updated employment information including pay stubs (she informed the agency that this employment had begun in May 2012).
4. Petitioner's daughter had previously been employed at two part time jobs, but lost the jobs in early August. Petitioner did not report this loss in income at the time of the August 16 review.
5. The Department budgeted the following income to the household: ██████ \$1,658.58 monthly wages; ██████ \$439.50 per month; \$435.68 (child support); and, 421.47 per month (SSI).
6. On August 17, 2012, the Department issued a notice to petitioner that informed her that it would be terminating her FoodShare benefits due to income over the limit.
7. Petitioner filed a timely appeal.
8. Petitioner ultimately informed the Department on August 29, 2012 that her daughter no longer had wage income. At the same time she also reported that her husband was back in the household. Petitioner reported that her husband had returned to the household in May 2012 and that he is unemployed.

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 was, at the relevant time of the agency action, \$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.

The gross income for the household was calculated to be \$3,112.58. The gross income limit for a family of 3 at the time of the August determination was \$3,090. The record reflects that the petitioner did not report her husband back in the household until late August. So, the August determination was based on the agency's belief it was a 3-person household with a new increase in income based on the new pay stubs. With the new income, the family did not meet the gross income test.

I will also note that even if the house had been tested at a 4-person household, it appears that it would met the gross income limit but still failed the net income test, as the allotment per table 8.1.2 would have been zero.

Petitioner argues that the Department did not have the most current information relating to household composition or income. The time of the Department determination was August 16, 2012. That is the determination I must review. Petitioner, at the time of the hearing, argued that her circumstances have changed because her daughter lost her jobs in early August and her husband was back in the home as of May. But, the best evidence in the record indicates that these facts were not made known to the Department agent until after the August 16 determination. It seems that petitioner amended her income information and provided pay stubs, but did not update her daughters lost income until later in August. Petitioner is entitled to re-apply for FS based on new circumstances. But, I cannot determine that the Department erred simply because it did not apply facts that petitioner had not reported.

CONCLUSIONS OF LAW

The Department did not err in terminating the petitioner's FoodShare.

THEREFORE, it is

ORDERED

That this appeal 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



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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

Oneida County Department of Social Services
Division of Health Care Access and Accountability