



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/143431

PRELIMINARY RECITALS

Pursuant to a petition filed August 27, 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 20, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent erred in determining petitioner's income and subsequently reducing petitioner's FS benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Mary Hartung
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner completed an ACCESS online renewal of her FS case on July 29, 2012. On August 6, 2012, petitioner submitted verification of her last 30 days of income to the agency. Petitioner

averaged 63.5 regular hours, and 8.25 overtime hours. Holiday pay included on one paystub was disregarded in computing petitioner's income.

3. In addition to her earned income, petitioner receives unearned income from child support.
4. On August 7, 2012, respondent sent a notice to petitioner informing her that her FS benefits would be reduced from \$152.00 to \$16.00 monthly. The notice indicated that petitioner's counted income (gross income, less applicable deductions) was \$1,192.91. The counted income limit for petitioner's FS household of two is \$1,226.00.
5. On August 27, 2012, petitioner appealed the reduction in FS benefits.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget **all earned and unearned income of the FS household**. 7 C.F.R. §273.9(b). This includes child support, Supplemental Security Income (SSI), SSDI, child support, and W-2 payments received by household members. FoodShare Wisconsin Handbook, § 4.3.1.

FS benefits are calculated pursuant to 7 C.F.R. § 273.9. The maximum FS allotment amounts, based on household size, are listed at FoodShare Wisconsin Handbook, Appendix 8.1. The county agency applied the net (counted) income limits to petitioner's FS household in determining to reduce petitioner's FS benefits as of September 1, 2012. In calculating net income, the following deductions are allowed: **(1) standard deduction** - which currently is \$134 per month for all households. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin Handbook, § 4.6.2; **(2) earned income deduction** - which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FoodShare Wisconsin Handbook, § 4.6.3; **(3) medical expense deduction** - for medical expenses exceeding \$35 in a month for an elderly or disabled person. 7 C.F.R. §273.9(d)(3); FoodShare Wisconsin Handbook, § 4.6.4; **(4) dependent care deduction** for child care expenses. 7 C.F.R. §273.9(d)(4); FoodShare Wisconsin Handbook, § 4.6.6; and **(5) shelter expenses deduction** - 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, § 4.6.7.

In a Fair Hearing concerning the propriety of a discontinuance/ reduction or calculation of FS benefits, such as this, the county agency has the burden of proof to establish that the action taken by the county was correct and proper. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the calculation of petitioner's FS benefits.

During the September 20, 2012, hearing, the county presented a well-documented case to establish that petitioner's net household income of \$1,226.00 was appropriately calculated with petitioner's recent wage information (paystubs dated July 20, 2012, and August 3, 2012). The petitioner was unable to provide any testimony or evidence to refute that her FS household of two had lower net income than that determined by the county agency. Petitioner noted that her overtime pay was not regular or constant, and therefore should not be included in the calculation. However, FS regulations all wages are to be counted as a source of income. FoodShare Wisconsin Handbook, § 4.3.2.1. Petitioner did not provide any documentation supporting her claim that the overtime pay was a fluke. Therefore, I conclude that the petitioner's household's income was properly calculated by the respondent. Accordingly, based upon the above, I must conclude that the county agency correctly reduced the petitioner's FoodShare (FS) benefits effective September 1, 2012. I note that nothing in this decision would prevent petitioner from submitting further pay stubs to the respondent in order to ensure that her income and benefits are properly assessed going forward.

CONCLUSIONS OF LAW

The county agency correctly reduced the petitioner's FoodShare benefits effective September 1, 2012, due to its proper calculation of net household income.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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, 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 19th day of October, 2012

Peter McCombs
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 19, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability