



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/143542

PRELIMINARY RECITALS

Pursuant to a petition filed August 31, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services by Milwaukee Enrollment Services, in regards to FoodShare benefits (FS), a telephone hearing was held on September 26, 2012, at Milwaukee, Wisconsin. At the request of the county agency, the record was held open for 10 days for the submission of additional information.

The issue for determination is whether the Department correctly determined the sufficiency of the petitioner's FS allotment effective July, 2012.

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: Catherine Mays, HSPC
Milwaukee County Department of Human Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is the casehead of a 7 person FS household that was receiving \$496 of FS in at least June, 2012.
2. On or about June 28, 2012, the petitioner filed with the agency her husband [REDACTED]'s biweekly paystubs from O'Reilly's for June 7 & 21, 2012. His gross earnings were \$1,324.62 in the first period and \$1,778.44 in the second pay period.

3. On or about July 6, 2012, the county agency issued a Notice to the petitioner informing her that her FS would be reduced from \$496 to \$299, effective July 1, 2012, due to an increase in household income.
4. The county agency determined that [REDACTED]'s average bi-weekly wage was \$3,335.79 per month. ($\$1,324.62 + \$1,778.44 = \$3,103.06$; $\$3,103.06 \div 2 = \$1,551.53$ [average bi-weekly pay]; $\$1,551.53 \times 2.15$ [standard bi-weekly pay multiplier] = \$3,335.79. In addition, the agency determined that the petitioner received then averaged child support from the KIDS database of \$106.99. The agency computed the petitioner's FS allotment for July, August & September using these income amounts, as shown in Exhibit #4, at p. 1. See also, pp. 2-4.
5. The petitioner and her husband pay \$900 per month in rent, and the agency used that reported sum in the FS budgets for July – September, 2012. The household does not have any dependent care expenses nor any reported excess medical expense for an elderly or disabled member.
6. On August 31, 2012, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the sufficiency of her FS allotments retroactive to July 1, 2012. Benefits were not continued pending the hearing decision.

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 \$208 per month for a household with seven people. 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 a fair hearing concerning the sufficiency of FS issued, the burden of proof is on the Department to demonstrate that it correctly computed the petitioner's FS allotments, and the petitioner must then rebut this evidence with her own evidence showing the agency was incorrect.

I have reviewed the FS budget, which was the same for July, August & September, 2012.

The petitioner asserted that the agency had incorrectly determined her husband's earned income, alleging that the agency counted about \$200 more per month than he actually earned, and asserting her child support income was less.

The agency, however, demonstrated that it used the June, 2012, paystubs submitted by the couple, averaging [REDACTED]'s salary and commissions received bi-weekly and then using the 2.15 bi-weekly multiplier as required under FS policy to determine his gross monthly earned income. I have reviewed these computations, and can find no error. As to the child support, the KIDS database supports that at the time of the FS determination she was receiving the child support counted, as averaged for the three prior months. See, Exhibit #4. [REDACTED] was at the hearing and admitted that he does consistently receive commissions in his job in the range reported by the couple in June, 2012.

Otherwise, the agency correctly allowed the 20% earned income deduction, the standard deduction, and computed and allowed the excess shelter expense deduction based upon the \$900 rent plus the Standard Utility Allowance (\$444) granted all FS households. The petitioner admitted no out of pocket dependent

care expenses existed, and no household member is elderly or disabled with reported excess medical expenses.

Having reviewed all of the FS computations, I can find no error. Nor has the petitioner pointed to any valid error. The Department correctly determined the petitioner's FS for July – September, 2012, based upon the household's reported income and expenses.

If the household's income or expenses change in any real amount, the petitioner would be well -advised to report these changes immediately if they affect her eligibility for FS, and ask the agency to re-determine the household's FS allotment.

CONCLUSIONS OF LAW

That the Department has established by the preponderance of the evidence in this record that it correctly determined the sufficiency of the petitioner's July, August & September, 2012 FS allotments at \$299 per month.

NOW, THEREFORE, it is **ORDERED**

That the petition for review herein be, and the same hereby 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 2nd day of October, 2012

Kenneth D. Duren, Assistant Administrator
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee County Department of Human Services - email
Department of Health Services - email



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The preceding decision was sent to the following parties on October 2, 2012.

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