



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/143676

PRELIMINARY RECITALS

Pursuant to a petition filed September 06, 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 October 02, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly reduced the Petitioner's FS benefits from \$363/month to \$2/month effective September 1, 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
Madison, Wisconsin 53703

By: Alma Lezama

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's FS renewal was completed on August 14, 2012. Household size was reported as three.

3. Petitioner's husband WD is employed as a school bus driver for Lamers Bus Lines . During the school year, WD is employed 19 hours/week at a rate of \$12.50/hour. His monthly earned income is \$1021.25. During the summer, he is not employed by Lamers on a regular basis and receives Unemployment Compensation benefits. On August 29, 2012, the system auto-updated WD's UC benefits as \$160/week. The agency budgeted his unearned income for the month as \$688 (\$160 x 4.3 weeks). However, WD's actual UC benefits were issued as \$153 on September 6, 2012, \$42 on September 10, 2012, \$39 on September 17, 2012 and \$0 on September 23, 2012.
4. Petitioner's daughter CM is 18 years or older and is employed with Milwaukee SportService at Miller Park. She works seasonally during the Milwaukee Brewers baseball season. Her hours vary and depend on how often the Milwaukee Brewers are playing at Miller Park. Her rate of pay is \$7.80/hour. Her last day for the 2012 season was October 3, 2012. Her income for the month of August, 2012 was \$232.84. The agency budgeted her income as \$670/month based on an employment verification which indicates that she works up to 20 hours/week (varies) at \$7.80/hour. CM's last day of employment with Milwaukee SportService was October 3, 2012.
6. On August 30, 2012, the agency issued a Notice of Decision to the Petitioner notifying her that she would receive \$2/month in FS benefits. The agency budgeted earned income of \$156/week for CM, \$475 earned income from Lamers Bus Lines every two weeks for WD and \$160/week in UC benefits for WD. The agency budgeted total gross household income of \$2,380.05/month.
7. On September 6, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

In determining the amount of FS to be issued each month, the agency must budget all of the household's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. Generally, the agency should use income from the last 30 days to determine prospective income unless that income does not accurately represent anticipated future income. FS Handbook, App. 1.2.4.2. If income fluctuates, the worker must determine a monthly average using prior months' income. Specifically, Appendix 1.2.4.2 provides as follows:

If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. To average widely fluctuating income, use the household's anticipated income including fluctuations anticipated over the certification period. In any case, make every attempt to accurately verify prospective income and clearly document the reasoning for the prospective income estimate.

It is clear that the Petitioner's household has fluctuating income. WD has regular earned income from Lamers Bus Lines during the school year but he has earned income and unearned income that fluctuates significantly during the summer months. Similarly, CM is seasonally employed and her hours and income vary significantly when she is employed.

In this case, the agency determined the household income by budgeting WD's regular earned income for August even though he did not have regular earned income in August. Also, the agency budgeted unearned income of \$160/week but WD's unemployment benefits fluctuated during the month. Similarly, the agency budgeted earned income for CM of \$670/month (based on 20 hours/week @ \$7.80/hour) but CM's actual income for the month of August, 2012 was \$232.84 based on pay statements provided by the Petitioner and her income varies significantly during the baseball season.

Because of the household's fluctuating income, the agency should have used a longer period of past time to get a more accurate indication of average monthly household income. For WD's earned income, the

income fluctuates but previous years should provide a more accurate monthly average, considering that the earned income is fairly consistent during the school year and that his UC benefits during the summer fluctuate depending on his earned income. Similarly, the agency should review CM's income over the entire season she was employed to obtain a more accurate average monthly income. It is clear from her pay statements that she does not regularly work 20 hours/week and that monthly income based on that level is not an accurate reflection of her average monthly income.

CONCLUSIONS OF LAW

The agency did not properly consider the Petitioner's household's fluctuating income in determining the household's monthly income and in determining the proper amount of FS benefits.

THEREFORE, it is

ORDERED

This matter is remanded to the agency to make a new determination of average monthly income for the Petitioner's household effective September 1, 2012 based on a review of WD's fluctuating earned income and unearned income in previous years or months and a review of CM's fluctuating earned income during her seasonal employment. The agency shall issue a new notice of decision to the Petitioner informing her of the agency's determination. These actions shall be completed within 10 days of the date of this decision.

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 Milwaukee,
Wisconsin, this 7th day of November, 2012

Debra Bursinger
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 November 7, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability