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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]

DECISION

FOO/143790

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 12, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 18, 2012, at Racine, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's FS benefits for September and October, 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: Kathy Christman

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County. Petitioner's household size is one.
2. On August 15, 2012, the Petitioner completed a FS phone interview with the agency.

3. Petitioner has monthly SSDI income of \$916. She has excess medical expenses of \$64.90/month. She has shelter costs of \$579.65/month and pays utility expenses.
4. Petitioner's 2011 federal tax returns report business income of \$1,340 and depreciation expenses of \$1,060 from a rental property owned by the Petitioner. Based on the 2011 federal tax returns, the agency determined the Petitioner's monthly self-employment income as \$200 ( $\$1340 + 1060 \div 12$  months).
5. Petitioner's rental property was not habitable during the period of January, 2012 – October 31, 2012. Petitioner anticipates that the property will be in a condition to rent effective November 1, 2012.
6. On August 16, 2012, a Notice of Action and Proof Needed was issued by the agency to the Petitioner notifying her that the following items were required to be submitted to the agency in order for a determination of FS benefits to be made: signature on application; copy of life insurance policy or other proof of life insurance policy and its value; financial statement or other proof of value of a trust fund; financial statement or other proof of value of a checking account at Chase bank; federal tax forms proving self-employment income from rental property; proof of average number of hours/month worked at rental property. All of these items were due to the agency by August 27, 2012.
7. On August 17, 2012, a Notice of Decision was issued by the agency informing the Petitioner that if her FS renewal was not complete by the end of the month, her FS benefits would end effective September 1, 2012.
8. On August 22, 2012, the Petitioner provided the signature page, self-employment information and verification of the trust fund value. The Petitioner provided a statement that she works 5 hours/month managing the rental property.
9. On August 24, 2012, a Notice of Decision was issued by the agency informing the Petitioner that effective September 1, 2012, she would receive monthly FS benefits of \$73 and monthly FS benefits of \$55 effective October 1, 2012.
10. On September 5, 2012, a Notice of Decision was issued by the agency informing the Petitioner that her FS benefits would increase to \$73/month effective October 1, 2012.
11. On September 12, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

At the hearing, the agency conceded that the Petitioner's FS benefits had not been properly determined for September and October, 2012 based on information that the agency worker learned just prior to the hearing from the Petitioner. Specifically, the agency testified that it had learned the Petitioner's rental property was not habitable in September and October, 2012. Therefore, the agency should not have included self-employment income of \$200/month in determining Petitioner's FS benefits. All other items in the FS budget were discussed and the Petitioner did not dispute the agency's calculations with regard to her Medicare premium/excess medical expense and shelter and utility expenses. Based on the evidence and testimony, the agency should have calculated the Petitioner's benefits for September and October based on gross monthly income of \$1,015.90 rather than \$1,215.90.

I note that the Petitioner testified that her property will be ready to rent effective November 1, 2012. At that point, the agency will re-calculate benefits based on income from the rental property.

**CONCLUSIONS OF LAW**

The agency did not properly determine the Petitioner's FS benefits for September and October, 2012.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency to re-calculate the Petitioner's FS benefits for September and October, 2012 based on gross monthly income of \$1,015.90. If the Petitioner's rental property is in a condition to rent effective November 1, 2012, the agency shall re-calculate the Petitioner's FS benefits effective November 1, 2012 based on all income of the household including income from the rental property. The agency shall issue Notices of Decision to the Petitioner with the new determinations for FS benefits for September, October and November, 2012. 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

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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.

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