



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/144044

PRELIMINARY RECITALS

Pursuant to a petition filed September 19, 2012, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Milwaukee County Dept. of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 17, 2012, by telephone.

The issue for determination is whether petitioner's school income was budgeted correctly.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Belinda Bridges
Milwaukee County Dept. of Human Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received \$526 FS in September, 2012 for a three-person household. He had a review in September, 2012.
3. Petitioner's yearly income from his job at a school is \$26,190 spread over 9.5 months. In the summer, 2012, petitioner applied for Wisconsin Works (W-2); he eventually received a total of \$250 in W-2 payments covering August and September, 2012.

4. When the agency calculated petitioner's benefits, it divided his yearly school income by 9.5, which averaged \$2,756.84 per month. Petitioner's FS initially were denied for October, 2012, as seen in a notice dated September 14, 2012. The agency eventually issued \$8 FS for October.

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). The issue in this case is how petitioner's school income was budgeted. In the past his income was divided by twelve to get a monthly amount. This time it was divided by 9.5, with the reason being that petitioner supplemented his income in the summer because he applied for and received W-2.

The FS Handbook, Appendix 4.3.2.1, no. 13, provides as follows:

Contractual Pay. Contractual income that is the food unit's annual income (intended to provide support for the entire year), and is not paid on an hourly or piece work basis, should be prorated over 12 months. Contractual income that is not the food unit's annual income (intended to provide support for the [household] for only a portion of the year), and is not paid on an hourly or piece work basis, shall be prorated over the period the income is intended to cover.

Income from piecework or hourly work is not contractual income. Do not treat it as such.

The handbook provision distinguishes between someone who is paid for 9.5 months and has no other income during the off months and someone who works during the off months. In the first case the person's contractual income is divided by 12; in the second case by 9.5 (and then presumably budgeted only during those 10 months, with the supplemental income budgeted the other two months).

The agency in this case treated petitioner like a contractual employee who supplemented his income in the summer. The problem is that petitioner is not a contractual employee.

There is a case note from September 13 saying that he is not on a contract. However, a later case note mentions that he supplements his income. Because it was unclear whether petitioner is a contractual employee, I accessed petitioner's electronic case file. I found the three most recent income verifications from his school employer (September 18, 2012, August 15, 2011, and March 14, 2011). All three stated similarly that petitioner is a full-time food service worker who works when school is in session, and then stated his total *estimated* income for the school year based upon his hourly income. That language suggests to me that petitioner is not a contractual employee. The income for a contractual employee would not have to be estimated; it would be stated in the contract.

I conclude, therefore, that the agency determined correctly that petitioner's income should not be divided by 12 because he is not a contractual employee. Thus the agency should budget only his estimated monthly income. 40 hours per week times \$17.23 multiplies out to more than the \$2,756 per month than the county budgeted (for FS weekly income is multiplied by 4.3, while for Medical Assistance weekly income is multiplied by 4).

CONCLUSIONS OF LAW

The agency correctly budgeted petitioner's actual monthly income beginning in October because he is not a contractual employee whose income would be prorated over an entire year.

THEREFORE, it is

ORDERED

That 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 22nd day of October, 2012

Brian C. Schneider
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 22, 2012.

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