



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/144930

PRELIMINARY RECITALS

Pursuant to a petition filed November 1, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Department of Health Services' Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 21, 2012, at Milwaukee, Wisconsin. The hearing record was held open to November 27, 2012, for submissions by the parties.

The issue for determination is whether the Department correctly reduced the petitioner's FS allotment for 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: Sharon Thacker, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. The petitioner has been receiving FS every month in 2012 as a household of four persons (self and three children). The monthly allotments were \$465 from January through March, 2012, and \$481 from April through September, 2012.
3. On September 4, 2012, the Department issued written notice to the petitioner advising that her FS allotment would decrease to \$326 effective October 1, 2012. The basis for the decrease was increased earned income and child support. *See*, Exhibit 1.
4. In September 2012, the Department received the petitioner's Six Month Report Form (SMRF), with her attached paystubs from August 2012. The earnings **averaged \$237.40 gross weekly**. In reviewing the September SMRF, the agency also budgeted higher child support. In preparing for hearing, the agency reviewed its documentation, and determined that the support amount was too high. The agency has recalculated the support and determined that the new support amount changes the allotment amount upward to \$382 from October 2012 forward. With this adjustment, the petitioner is no longer challenging the amount of budgeted child support here.
5. The petitioner continues to challenge the earned income figure for October 2012 onward. She testified that August 2012 was an unusually high earnings month. The record was held open for review of the petitioner's gross pay from her paystubs for September and October, 2012. Those paystubs were received.
6. Three out of four paystubs for September were received (9/7, 9/14, 9/21). They show gross average weekly pay of \$239.33. The October paystubs averaged \$249.38 weekly. Three November paystubs were submitted, and they average \$202.17 weekly.

DISCUSSION

The petitioner questions the correctness of the calculation of her FS allotment amount for October, 2012, onward. Specifically, she questions the amount of gross earnings being budgeted. The budgeting calculations here were performed prospectively. Prospective budgeting should reflect what the petitioner is likely to receive, on average, each month. *FS Wisconsin Handbook (FSWH)*, 4.1.1, viewable online at www.emhandbooks.wisconsin.gov/fsh/. For earned income that is received biweekly, the agency is directed to develop a biweekly average, and then multiply that figure by 2.15 to account for three-paycheck months. For weekly income, the multiplier is 4.3. 7 C.F.R. §273.10(c)(2).

The agency's standard practice is to budget earned income based on the gross earnings from the 30 days preceding an application or case review. That was correctly done here. *FSWH*, 1.2.4.2. The petitioner contends that the selected month was an aberration. When a client contends that a specific month is not representative of the income received over the six month period, a longer timeframe can be averaged to arrive at the gross income amount.

Looking at the 10 paystubs that were submitted from September 7 through November 16, 2012, the average weekly gross earnings totaled \$2,322.02 (\$717.99 September + \$997.52 October + \$606.51 November, divided by 10 weeks). When the \$232.20 average weekly amount is multiplied by 4.3 to account for five-paycheck months in accord with the federal rule, the result is \$998.46 monthly. When \$998.46 is divided by four weeks to come up with the weekly amount shown in the budgeting section of the petitioner's notice, the result is \$249.62 weekly. This is higher than what the Department budgeted in arriving at the current allotment amount for October 2012 onward. Thus, the petitioner is not entitled to a higher FS allotment at this time.

CONCLUSIONS OF LAW

1. After adjusting the petitioner's child support amount downward, the Department correctly calculated the petitioner's income for FS purposes from October 2012 forward.

THEREFORE, it is

ORDERED

That the petition 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 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 Madison,
Wisconsin, this 18th day of December, 2012

\sNancy J. Gagnon
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 December 18, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability