



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/144278

PRELIMINARY RECITALS

Pursuant to a petition filed October 1, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Oneida Tribe Social Services in regard to FoodShare benefits (FS), a hearing was held on December 20, 2012, by telephone. Hearings set for November 7 and December 5, 2012, were rescheduled at the petitioner's request. The hearing record was held open for submission by the Administrative Law Judge of a letter to the agency, and consideration of that response.

The issue for determination is whether the Oneida Tribal Agency correctly computed the petitioner's FS eligibility/allotment from July 1, 2012, to the present, on remand from prior fair hearing decision #142161.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Vicki Schrimpf, supervisor
Outagamie Co. HSD, in coverage for:
Oneida Tribe Social Services
2640 West Point Rd.
PO Box 365
Oneida, WI 54155

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Oneida County.
2. The petitioner filed a previous fair hearing request, #142161, to challenge the agency's determination that she was not eligible for FS from July 1, 2012, forward. The resulting hearing decision dated September 5, 2012, directed the agency to redetermine the petitioner's eligibility and allotment level.
3. On September 19, 2012, the agency (worker A. Severson) issued a Notice of Decision advising the petitioner that her FS remained denied from July 1, 2012, forward. The basis for denial was excess income. The income that was counted was [REDACTED]'s \$781.78 monthly SSI, the petitioner's monthly gross earnings of \$1,530.93, the petitioner's monthly tribal payment of \$ 100, the petitioner's Unemployment Compensation of \$92.50 weekly (\$397.75 monthly), and monthly child support of \$43.38 for her child, Abigaila. These amounts totaled \$2,853.84. Rent was correctly identified as \$225 monthly for July through September.
4. The petitioner then filed this appeal on October 1, 2012, to contest the agency's redetermination. The tribal agency did not submit exhibits or an explanatory summary for the new appeal. Because the tribal agency did not participate in the hearing, the Administrative Law Judge sent a letter (with the petitioner's consent and copy -in) on December 21, inviting the agency's response within 7 days. The letter, addressed to Oneida Tribe Social Services, 2640 West Point Rd., Oneida, WI 54155, was later returned to this office as undeliverable.
5. Upon receiving her copy of the December 21 letter, the petitioner telephoned the Administrative Law Judge to clarify her household composition. She stated that, for July 2012, onward, the household has consisted of herself, [REDACTED] and her two children. Her mother is not part of the FS household, as she purchases and prepares food separately.
6. From July through September 2012, the household received [REDACTED]'s \$781.78 SSI, the \$100 tribal payment, the UC, and the child support. The child support ended for October, which the petitioner reported to the agency, per her testimony. The petitioner's gross monthly earnings, which are significant to this dispute, were \$891.65 in July and August, and \$938.86 for September onward, per her testimony. The July/August earnings were \$11.52 x 18 hours weekly x 4.3, and the September onward earnings were \$12.13 x 18 hours weekly x 4.3. The July/August earnings were verified by a *FS Change Report*, received by the agency on June 13, 2012, from Judge Tedesco's file (Exhibit 5). The agency has not submitted evidence of higher pay in this hearing record.

DISCUSSION

The petitioner questions the correctness of the calculation of her FS allotment amount for July, 2012, onward. The parties agree as to her household's SSI, child support, tribal payment and UC income. In Finding #6 above, I have accepted the income amount testified to by the petitioner at hearing. 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).

In calculating the petitioner's August allotment (as an example), the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county start with gross, rather than net, income, and allow only a limited number of identified deductions from that income. *FSWH*, 1.1.4. The regulations direct that a Standard

Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a case with four persons is set at \$160, per *FS Wisconsin Handbook*, 8.1.3. Twenty percent of any earned income is then subtracted as the Earned Income Deduction; that deduction was correctly given here. A Dependent Care Deduction is also taken if she incurs day care expenses in order to go to work, an Excess Medical Expense Deduction is subtracted for an elderly or disabled person’s allowable medical expenses that exceed \$35 per month, and child support paid out garners a deduction. There is no record of the latter three expenses here. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of that income. 7 C.F.R. §273.9(d)(6)(ii). Based on a \$225 shelter cost plus the \$444 heating utility standard, the petitioner’s shelter costs totaled \$669. This did not exceed half of the adjusted income (\$938.12), so nothing was deducted in the allotment calculation.

Thus, the August, 2012, allotment calculation correctly looked like this:

Gross income	2214.56 (compared to the \$2,853 used by the agency)
Minus Earned Inc. Deduction	-178.33
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-160.00</u>
Adjusted Income	1876.23
Minus Shelter Deduction	<u>-000.00</u>
Net Income	1876.23

The correct allotment for four persons with net income of \$1,876.23 was **\$104** in July and August 2012. *FS Wisconsin Handbook*, 8.1.2.

The petitioner’s earnings increased from September forward to \$ 938.86 monthly. This changed the total gross income and creates this calculation:

Gross income	2261.77
Minus Earned Inc. Deduction	-187.77
Minus Standard Deduction	<u>-160.00</u>
Adjusted Income	1914.00
Minus Shelter Deduction	<u>-000.00</u>
Net Income	1914.00

The allotment for four persons with net income of \$1,914.00 was **\$93** in September 2012.

This case will be remanded to the tribal agency with instructions to issue a \$104 allotment to the petitioner for July, a \$104 allotment for August, and a \$93 allotment for September, 2012. The agency is to redetermine her allotments, based on the best information available, for October 2012 to the present. The best information available includes cessation of child support for October 2012.

CONCLUSIONS OF LAW

1. The petitioner was entitled to a \$104 FS allotment for July 2012.
2. The petitioner was entitled to a \$104 FS allotment for August 2012.
3. The petitioner was entitled to a \$93 FS allotment for September 2012.
4. The agency must redetermine the petitioner’s FS allotments for October 2012 to the present month, based on the best information available.

THEREFORE, it is

ORDERED

That the petition is remanded to the tribal agency with instructions to issue a \$104 allotment to the petitioner for July, a \$104 allotment for August, and a \$93 allotment for September, 2012. The agency is to redetermine her allotments, based on the best information available, for October 2012 to the present. The best information available includes cessation of child support for October 2012. These actions shall be taken within 10 days of the date of this Decision. In all other respects, 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 25th day of January, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 25, 2013.

Oneida Tribe Social Services
Division of Health Care Access and Accountability