



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED] by
[REDACTED]

DECISION

FOO/145045

PRELIMINARY RECITALS

Pursuant to a petition filed November 07, 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 January 03, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly reduced the Petitioner's FS benefits effective December 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] by
[REDACTED]

Respondent:

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

By: Nikitia Howse
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. On October 26, 2012, the Petitioner submitted a six month report form (SMRF) to the agency with four pay stubs dated October 5, 12, 19 and 26, 2012.

3. On November 5, 2012, the agency issued a Notice of Decision to the Petitioner informing him that as of December 1, 2012, his monthly benefits would be reduced from \$200 to \$16.
4. On November 7, 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 recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$149 per month for all households with less than five people. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FS Handbook, App. 4.6.7.

When an FS recipient reports a change, the agency handles it differently depending on whether the change will result in an increase or a decrease in FS. 7 C.F.R. §273.12(c). If the change will result in a decrease in FS, the agency should issue a notice informing the client of the decrease effective the next possible month. 7 C.F.R. §273.12(c)(2)(i). The agency must then verify the change prior to the next recertification. If a person reports a change that will result in increased FS, the general rule is that the increase will take place the next month. 7 C.F.R. §273.12(c)(1).

FS benefits for a month are based on prospective income for that month. FS Handbook § 4.1.1. The agency uses income received during the last 30 days as an indicator of the income that is and will be available to the household during the certification period, unless that income does not accurately reflect changes in income that have occurred or are anticipated to occur. FS Handbook §1.2.4.2. 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. FS Handbook § 1.2.4.2.

If a job has regular hours, the agency must multiply the hours by the hourly wage to determine a weekly wage, then multiply that amount by 4.3 to determine a monthly wage (4.3 because there are more than 28 days in all months but February). If the person is paid bi-weekly, income is multiplied by 2.15 to get a monthly amount. See the prospective budgeting self-study guide, part of the Bureau of Welfare Initiatives Operations Memo no. 97-113, dated October 31, 1997.

In this case, the Petitioner testified that he was not clear if the agency had calculated his income properly. He stated that his work is seasonal and that the agency should consider that when calculating his monthly income. Petitioner is a school bus driver who is employed during the school year and but not during school breaks. It is clear from the 4 pay stubs that he submitted that his income varies slightly. He testified that the agency should consider that his income drops significantly during school breaks, especially during the summer.

The agency is to calculate income based on what is anticipated. In this case, the Petitioner anticipated being regularly employed during the certification period with the exception of short school breaks. The Petitioner can submit any changes in income to the agency for consideration when those changes occur but, until the summer break, his hours and income are anticipated to be relatively stable. In this case, the agency properly averaged the Petitioner's income as \$401.32/week or \$1,725.68/month based on the pay statements submitted by the Petitioner.

I reviewed the agency's budget screen and conclude that the agency properly determined the Petitioner's monthly income based on the pay statements submitted and the testimony and evidence provided. I also conclude that the agency properly calculated an earned income deduction, standard deduction and shelter deduction in determining the Petitioner's monthly FS allotment. I note again that the Petitioner can ask for his benefit allotment to be re-considered if or when his income situation changes.

CONCLUSIONS OF LAW

The agency properly reduced the petitioner's FS benefits to \$16/month effective December 1, 2012.

THEREFORE, it is **ORDERED**

That the petition be, and hereby 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 Milwaukee,
Wisconsin, this 28th day of January, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 28, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability