



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/145671

PRELIMINARY RECITALS

Pursuant to a petition filed November 30, 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 December 26, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in reducing petitioner's FS allotment to \$91 due to income.

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: Mary Hartung
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Prior to December 2012, petitioner was receiving \$526 in monthly FS benefits. The only income budgeted to the 3-person household was \$698 unearned income.

3. Petitioner informed the Department of new employment on a six month report form. The Department recalculated eligibility based on employment information for petitioner which resulted in earned income.
4. The Department sent notice to petitioner on November 5, 2012 informing him that his FS benefits would be ending on December 1, 2012 due to income over the program limit. The notice indicated a gross income of 2,725.89.
5. On December 13, 2012, the Department recalculated petitioner's earned income as a contract employee by using the contract income sum and dividing by 12 to reach a monthly income figure. Calculated this way, the petitioner was eligible for FS.
6. On December 14, 2012, the Department sent another notice indicating a budget for petitioner of \$2,343.60. This new notice indicated a new FS allotment amount of \$91 per month. This allotment was paid for the month of December and has been ongoing.
7. Petitioner filed a timely appeal.

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). From that income, certain deductions are allowed. The deductions include a standard deduction, which was, at the relevant time of the agency action, \$142 per month for a three person household. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin 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); FoodShare Wisconsin 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); FoodShare Wisconsin Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FoodShare Wisconsin 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); FoodShare Wisconsin Handbook, App. 4.6.7.

Petitioner did not dispute any of the calculations of the Department. The petitioner did question the application of a standard utility allowance and other deductions. Petitioner provided documentation (see exhibit #3) and testimony about various additional expenses he has including loan payments, overdue property taxes, energy bills, installment payments to the internal Revenue Service, and others. I can only find that the rules require application of a standard utility allowance, not one based on petitioner's actual expenses. See Foodshare Wisconsin Handbook §§ 4.6.7.3, and 8.1.3. And the remaining expenses are not deductions that are permitted under the rules of the program. This was not an error by the Department. This was simply a matter of the increase in income resulting in a decrease in public benefits. The Department found that petitioner met the gross income test and was eligible for FS. The Department then calculated petitioner's net income at \$1,448.22 with his new wage information. According to the FS Wisconsin Handbook Table 8.1.2, petitioner's allotment should be \$91 per month. I find no error with the manner in which the Department applied the rules.

CONCLUSIONS OF LAW

The Department did not err in determining a \$91 monthly FS allotment.

THEREFORE, it is

ORDERED

That this appeal 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 24th day of January, 2013

\sJohn P. Tedesco
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 January 24, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability