



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/145891

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dodge County Department of Human Services in regard to FoodShare (FS) benefits, a hearing was held on February 01, 2013, at Juneau, Wisconsin. The record was held open for a period of 10 days to allow for the submission of additional documentation. Said documents were timely received.

The issue for determination is whether the respondent correctly terminated petitioner's FS benefits, and whether petitioner correctly denied a subsequent application for FS benefits.

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: Lisa Hoffman

Dodge County Department of Human Services
143 E. Center Street
Juneau, WI 53039-1371

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County who received FS benefits in January, February and March of 2012.

2. On March 5, 2012, respondent notified petitioner that his FS benefits would be terminated as of April 1, 2012, due to income in excess of FS program limits.
3. Petitioner applied for FS benefits anew on or about August 28, 2012. By notice dated September 26, 2012, petitioner was informed that his application had been denied due to income exceeding program limits.
4. Petitioner appealed the termination and the denial on December 11, 2012.

DISCUSSION

I. Termination of Benefits

FoodShare recipients must appeal negative decisions within 90 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Adm. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. The agency notified the petitioner on March 5, 2012, that his FS benefits would end on April 1, 2012, because his income exceeded program limits. That same notice correctly specified that an appeal of the termination must be filed by July 2, 2012. The instant request for hearing was not filed until December 11, 2012, and is therefore untimely. As a result I lack the jurisdiction to consider an appeal of the termination of FS benefits.

II. Denial of FS benefits application

Petitioner timely appealed the denial of FS benefits. In determining the amount of FS to be issued each month, the respondent must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. § 273.9(b); *FS Handbook*, § 4.3.1. After the gross household income is calculated, certain deductions, as discussed in the *FS Handbook*, § 4.6 are allowed: (1) standard deduction - which was \$144 per month for all households. 7 C.F.R. § 273.9(d)(1); (2) earned income deduction - which equals 20% of the household's total earned income. 7 C.F.R. § 273.9(d)(2); (3) medical expense deduction – for medical expenses exceeding \$35 in a month for an elderly or disabled person. 7 C.F.R. § 273.9(d)(3); (4) dependent care deduction for child care expenses. 7 C.F.R. § 273.9(d)(4); and (5) shelter and utility expenses deduction - 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). The maximum FS allotment amounts, based on household size, are listed at *FS Handbook*, § 8.1.1. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wi.gov/fsh/>.

In a Fair Hearing concerning the propriety of a denial of benefits, such as this, the respondent has the burden of proof to establish that the action taken by the county agency was proper. The petitioner must then rebut the respondent's case and establish facts sufficient to overcome the evidence of correct action by the county agency in determining the discontinuance action was required. Here, the respondent presented evidence regarding the household size and the income of the household. Petitioner presented a full year's worth of paystubs, in an effort to disprove the respondent's proffered calculations.

In reviewing those paystubs, I initially note that petitioner is paid bi-weekly. August of 2012, however, was a month where petitioner received three paychecks. When counting earned income, the respondent is instructed as follows:

Households receiving income on a recurring monthly or semimonthly basis shall not have their income varied merely because of changes in mailing cycles or because weekends or holidays cause additional payments to be received in a month.

Example 2: Jim receives his military pay on the 1st and 15th of each month. If Jim's

payday of the following month is a holi day or falls on a weekend, he in paid ont eh last preceding work/week day. His may result in Jim recei ving 3 paychecks in one month. In this situation, only 2 payche cks per month should be budgeted for Jim.

FS Handbook § 4.3.2. I do not find that the petitioner’s situation is all that dissimilar for the fictional Jim. August just happened to be a mon th where the calendared days resulted in petitioner’s receipt of three paychecks. On average, the petitioner receives two paychecks per month. The respondent should not have added all three paychecks in arriving at August’s income determination, as it cle arly is not an accurate representation of petitioner’s earned monthly income on average.

I averaged the three paychecks received in August, and multiplied that product by 2.15 (biweekly amounts are multiplied by 2.15 rather than two because dividing the 52 weeks in a year by the 12 months equals 4.3 weeks per month and not four; those paid every other week receive an average of 2.15 paychecks per month) in order to arrive at an average pay of \$1,735.26 for the month of August:

$$\$2,421.49 (\$757.00 + \$800.00 + 864.49) / 3 = 807.16 \times 2.15 = 1735.26$$

When the August average gross pay is reduced by applicable deductions, the counted (net) income for petitioner’s household is \$1,108.32.

1,735.26
- 144.00 (standard deduction)
 1,591.26
- 347.05 (20% earned income deduction)
 1,244.21
- 135.89 (shelter expense: the excess expense above 50% of net income remaining after other deductions)
 1,108.32

This exceeds the counted income limit of \$908.00 for a one person household. Therefore, while I find that the respondent should have averaged petitioner’s August, 2012, income, even with said averaging the monthly income does not yield a result that would allow petitioner to qualify for FS benefits.

I find that the petitioner’s August income exceed FS program income l imits; the agency’s calculation error did not result in an incorrect determination to deny petitioner’s FS application . Nothing in this decision prevents petitioner from reapplying for FS benefits in the future; he is encouraged to do so, as he indicated at hearing that he anticipated reducing his work hours due to anticipated school enrollment.

CONCLUSIONS OF LAW

1. Petitioner’s appeal of the April 1, 2012, termination of benefits was not timely filed.
2. Petitioner’s income for August, 2012, was over the program limit, and his application for FS benefits was properly denied.

NOW, 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 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 February, 2013

\sPeter McCombs
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 February 18, 2013.

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