



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/146365

PRELIMINARY RECITALS

Pursuant to a petition filed January 03, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sauk County Department of Human Services in regard to FoodShare (FS) benefits, a hearing was held on January 29, 2013, at Baraboo, Wisconsin.

The issue for determination is whether respondent correctly determined petitioner's 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: Cheryl Emery

Sauk County Department of Human Services
505 Broadway, 4th Floor
PO Box 29
Baraboo, WI 53913

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County.
2. Petitioner applied for FS benefits on November 1, 2012.

3. Respondent budgeted earned income for petitioner in the amount of \$231.68 weekly and unearned income in the amount of \$931.90 monthly. For eligibility purposes the combined gross income totaled \$1,928.12 per month.
4. Respondent denied petitioner's FS application on November 15, 2012 due to income exceeding program limits.

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. Generally, the county should use income from the last 30 days to determine prospective income unless that income does not accurately represent anticipated future income. FS Handbook, § 1.2.4.2. If income fluctuates, the worker must determine a monthly average using prior months' income. Specifically, § 1.2.4.2 provides as follows:

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. To average widely fluctuating income, use the household's anticipated income including fluctuations anticipated over the certification period. In any case, make every attempt to accurately verify prospective income and clearly document the reasoning for the prospective income estimate.

The clear intent of the program is to use current income unless income fluctuates. Petitioner testified that she works for a national clothing company, and that her hours of employment fluctuate a great deal from season to season. The Employer Verification Form (EVFE) received by the respondent from petitioner's employer, specifically indicated that her regularly scheduled hours varied. See, Exhibit 3. Respondent testified that in situations where it is made aware of fluctuating employment hours, respondent will often seek further information, such as specific paystubs, as opposed to relying upon the EVFE. Respondent conceded, however, that it did not seek further information in this instance. When asked if petitioner was simply unlucky in the timing of her application (during the busy season), respondent answered in the affirmative and admitted that if the hours being scrutinized were reported from January, for instance, it is likely that petitioner would have qualified for FS benefits.

I conclude that the respondent should base its FS determination here on a larger sampling of petitioner's income, in light of its admitted past practice of pursuing further specificity when it is made aware of fluctuating hours. Thus, the respondent should re-determine FS for November, 2012, and thereafter using the average of petitioner's income over the past year. Respondent suggested the possibility of simply using petitioner's W-2 statement, which would seem to me to be a logical solution. Petitioner could also provide copies of paystubs for the prior year.

CONCLUSIONS OF LAW

The county incorrectly based its determination of petitioner's income on her employer's EVFE because the employer indicated that petitioner's hours varied, respondent did not seek further information regarding the employment hours' fluctuation, and petitioner works in an industry that is very seasonal.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to re-determine petitioner's FS eligibility for the months beginning November, 2012, by using an average of petitioner's income dating back to January of 2012. The county shall do so and issue any appropriate notices and/or FS benefits within 10 days of

this decision. The county shall do so and issue any appropriate notices and/or FS benefits within 10 days of this decision.

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 19th 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 19, 2013.

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