



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/146374

PRELIMINARY RECITALS

Pursuant to a petition filed January 07, 2013, 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 31, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly reduced the Petitioner's FS benefits for January, 2013.

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: Katherine May
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. Petitioner completed a FS renewal on December 7, 2012. In the renewal application, the Petitioner reported earned income from employment at Little Explorers Child Care. The start

date for this job was reported as November 20, 2012. The Petitioner reported 40 hours/week at \$7.25/hour. Petitioner reported a household size of 4.

3. On November 21, 2012, the Petitioner's employer submitted a letter to the agency dated November 19, 2012 indicating the Petitioner was hired starting November 20, 2012 and her hours would be Sunday, 11 a.m. – 11 p.m., Monday – Friday, 7 p.m. – 12 a.m., and Saturday, 10 a.m. – 10 p.m. The letter indicated starting pay of \$7.25.
4. On November 27, 2012, the agency contacted the Petitioner's employer and was told that the Petitioner works 49 hours/week and any hours she works over 40/week are paid as overtime.
5. On December 10, 2012, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would decrease to \$183/month effective January 1, 2013.
6. On January 7, 2013, the Petitioner submitted a check written to her from her employer dated January 4, 2013 for \$200 for the pay period of December 9, 2012 – December 22, 2012. She also Petitioner submitted a pay statement for the pay period of November 25, 2012 – December 8, 2012 showing hours of 57.5 for the two week period at \$8/hour for gross income of \$460. In addition, she submitted a letter from her employer dated December 18, 2012 stating that she would be laid off effective December 18, 2012.
7. On January 17, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would increase to \$477/month effective February 1, 2013.
8. Petitioner had Social Security income of \$781.78 in December, 2012. Effective January 1, 2013, SSI increased to \$793.78.
9. Petitioner receives Caretaker Supplement benefits of \$550/month.
10. Petitioner's rent is \$700/month.
11. The Petitioner filed an appeal with the Division of Hearings and Appeals on January 7, 2013.

DISCUSSION

As a general rule, applicants for FoodShare (FS) benefits are eligible to receive benefits provided they meet financial eligibility requirements. FS Wisconsin Handbook (FSH), §1.1.3. A threshold financial eligibility requirement is the gross income test. The gross income limit for most households is 200% of the Federal Poverty Level (FPL). Id., 4.2.1.1. The 200% FPL amount for a group of four is \$3,842. Id., §8.1.1. Income must be converted to a monthly amount. 7 Code of Federal Regulations, §273.10(c)2(i).

Earned income is counted for the purpose of determining FS eligibility and allotments levels. FS Wisconsin Handbook, §4.3.2. Unearned income is also counted. Id., §4.3.4.1. A standard deduction of \$149.00 is applied to all household income for a household of 1 to 3 people. Id., §4.6.2. The earned income deduction is 20%. Id., §4.6.3. These two items are deducted from gross income to arrive at adjusted household income. Shelter and utility expenses in excess of 50% of that adjusted household income is deducted. Id., §4.6.7. Also see 7 CFR 273.10 generally regarding budgeting calculations. Finally, the allotment applicable to a household is then reduced by 30% of the household's net income. 7 CFR 273.10(e)(2)(ii)(A).

The agency may use 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. The agency may also use statements from employers or an employment verification form to verify prospective income. FSH § 1.2.4.2.

All reported changes that cause an increase in the FS benefit including person additions, increases in expenses, etc., will be effective the first of the month following the report month if required verifications are received within 10 days of the request for verification. FSH, §6.1.3.3 and 7 CFR 273.12(c)(1).

In this case, the Petitioner was laid off from her employment on December 18, 2012. She did not report this change in income to the agency within 10 days. She reported the change on January 7, 2013. According to the FS policy, the increase in benefits as a result of this reported change in income is effective the first of the month following the report. Therefore, the agency properly processed the change effective February 1, 2013.

The Petitioner also testified that her employer reported inaccurate hours while she was employed from November 20 – December 17, 2012. The employer provided a written and oral verification to the agency on November 21 and November 27, 2012 regarding the Petitioner's hours. The Petitioner provided pay statements demonstrating her actual hours to the agency on January 7, 2013. It is not clear how the agency determined the Petitioner's earned income of \$833.33 for January 1, 2013 benefits based on the information that the agency had at that time from the Petitioner's employer. However, I note that the \$833.33/month that the agency budgeted prospectively is lower than the income that would have been budgeted based on the information from the Petitioner's employer. The information available to the agency was the Petitioner's application that indicated she would work 40 hours/week @ \$7.25/hour plus 9 hours overtime @\$10.87/hour. The employer's verifications on November 21 and November 27 confirmed this. The Petitioner did not supply information that this was inaccurate until January 7, 2013. Again, while I cannot determine how the agency calculated \$833.33/month in earned income, based on the information available, the earned income would have been prospectively budgeted at a higher monthly income. Therefore, I do not find merit in the Petitioner's argument that she should have received more benefits for January, 2013.

CONCLUSIONS OF LAW

The Petitioner was not entitled to more FS benefits for January, 2013 because she failed to submit information that might have increased her benefits until January 7, 2013. The agency properly re-determined the Petitioner's benefits for February 1, 2013 based on the information submitted.

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 6th day of March, 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 March 6, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability