



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/146436

PRELIMINARY RECITALS

Pursuant to a petition filed January 08, 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 February 06, 2013, at Milwaukee, Wisconsin. The record was held open to allow the petitioner time to submit additional documentation; said documentation was timely received. A concurrent appeal concerning Medical Assistance benefits is addressed in a separate decision.

The issue for determination is whether the respondent correctly calculated petitioner's income 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: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resides in a FS household of three.

2. Petitioner is an ongoing FS recipient.
3. At all times material hereto, the petitioner was employed by [REDACTED] her two adult children, [REDACTED] and [REDACTED] were employed by [REDACTED] a catering company.
4. Employer Verification of Earnings forms (EVFEs) submitted by [REDACTED] indicated that both [REDACTED] and [REDACTED] earned \$10.00 per hour, and worked an estimated 15-30 hours per week. Exhibit 3.
5. Five paystubs were submitted covering the period of October 15, 2012, through November 19, 2012, pertaining to [REDACTED]'s employment with [REDACTED]. Those paystubs indicate an hourly wage of \$9.00. Exhibit 4.
6. On November 8, 2012, respondent notified petitioner that her FS benefits would be ending effective December 1, 2012, due to income over the program limit. Exhibit 3. Respondent's calculations were based upon the hours and pay rate as identified in the submitted EVFEs.

DISCUSSION

In determining the amount of FS to be issued each month, the county must first budget the gross income of the FS household. 7 C.F.R. §273.9(b). This includes all income coming into the house, including child support, Supplemental Security Income (SSI) and W-2 payments received by household members.

“Prospective budgeting” is the determination of one month's FS benefits based on the agency's best estimate of income and circumstances that will exist in that month. “Eligibility and benefit calculations for FS FoodShare are based on prospectively budgeted monthly income using estimated amounts. The income to be budgeted is identified through the interview (2.1.3) and the verification (1.2.1) process. Only include income actually available to the group. Do not budget income until the first month in which it is received. The worker must use the best-verified information available when determining the best estimate of income. ” *FoodShare Eligibility Handbook* § 4.1.1.

The authorization to use a totally prospective system is found at 7 C.F.R. 273.10(c); the states have permission to deviate from this prospective system and use the retrospective budgeting system instead, per 7 C.F.R. 273.21(a). Wisconsin has chosen to use the prospective eligibility/prospective budgeting system. See *BWI Operations Memo*, 97-58 (issued June 25, 1997).

The petitioner argues that [REDACTED] has misreported [REDACTED]'s earnings as well as his average hours of work. Due to the employer's incorrect information, post-hearing the petitioner submitted five of [REDACTED]'s paystubs, which clearly indicate that [REDACTED] was earning \$9.00 per hour. Exhibit 4. The paystubs also reveal that petitioner's average hours worked per week is slightly over 15. Per handwritten notes on the FS budget screen, it is apparent that the respondent used an average of 22.50 weekly hours. While it does comport with the EVFE information, the hours assumption is clearly not borne out by the actual hours worked by [REDACTED]. [REDACTED]'s paystubs were not submitted, but it could certainly be argued that the 22.50 hours applied to her is incorrect as well.

Petitioner argues that, due to the nature of the catering business, [REDACTED] and [REDACTED]'s respective incomes fluctuate a great deal. [REDACTED]'s paystubs lend strong support for this argument, as they demonstrate weekly hours varying from 9.25 to 31.89. Exhibit 4. I note that when dealing with fluctuating income, the *FoodShare Handbook* instructs 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.

FSH, § 1.2.4.2.

In addition to the incorrect information provided by [REDACTED]'s employer's EVFE, the petitioner has also established fluctuating income. The respondent has not demonstrated that it has taken appropriate steps to attempt to address those fluctuations. I will remand this matter to the respondent to re-calculate petitioner's FS eligibility for December 1, 2012, going forward. The respondent shall utilize at least three months of paystubs in determining a prospective earned income budget for the petitioner.

CONCLUSIONS OF LAW

Due to incorrect information received from an employer, and failing to account for fluctuating monthly earned income, the county agency in correctly calculated the petitioner's counted income for FoodShare purposes.

THEREFORE, it is

ORDERED

That this matter shall be remanded to the respondent to, within 10 days of the date of this Decision, request verification of petitioner's wages for the three months preceding December 1, 2012. Upon receipt of acceptable verification, the respondent shall re-determine petitioner's FS eligibility and/or allotment for December, 2012, going forward.

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 March, 2013

\sPeter McCombs
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 19, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability