



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/146565

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare (FS) benefits, a hearing was held on February 07, 2013, at Milwaukee, Wisconsin. 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: Sharon Thacker

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is an ongoing FS recipient.

3. At all times material hereto, the petitioner was employed by [REDACTED] which operated an establishment known as [REDACTED]
4. During November, 2012, petitioner's pay stubs reflected gross earned income of \$1,525.46.
5. Petitioner's paystubs dated December 20, 2012 and January 3, 2013, reflected gross income of \$793.78.
6. Petitioner commenced receiving Unemployment Insurance benefits on or about March, 2012, but those benefits were not budgeted as a result of agency error.
7. The petitioner's total counted household income for January, 2013, was prospectively calculated to be \$693.90, pursuant to the petitioner's November, 2012, paystubs.

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 his employer has been misreporting his earnings, apparently fraudulently, in an effort to avoid having to pay his employees at a rate equivalent to the minimum wage. The petitioner has not reported this matter to the Department of Workforce Development, but testified that he is considering legal action. Due to the employer's allegedly incorrect information, petitioner has provided time clock records to the respondent, and requested that those records be used to arrive at a correct income calculation. However, the petitioner failed to substantiate those records at hearing, and I am unable to determine or verify the validity of the data that they supposedly contain. I cannot conclude that the respondent should have used those time clock records without further evidence of the validity of those records. I find that the petitioner has failed to prove by a preponderance of the evidence that his November paystubs were incorrect.

Petitioner also argues that his income fluctuates, and he illustrates his point by noting the almost 50% drop in his income between November and December of 2012.¹ I note that when dealing with fluctuating income, the *FoodShare Handbook* instructs as follows:

¹ To establish the difference in income for the months of December and January, 2012, petitioner relies on his pay stub information. It is unknown whether, or to what extent, any discrepancies identified by the time clock records would have impacted the difference in income.

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.

The petitioner has demonstrated fluctuating income, but the respondent has not proven that it has taken appropriate steps to attempt to address those fluctuations. I note that the standard here differs from that in the Medical Assistance program, and I will remand this matter to the respondent to re-calculate petitioner's FS eligibility for January, 2013 going forward. The respondent shall utilize at least three months of paystubs in determining a prospective earned income budget for the petitioner. I note that the respondent will also budget any Unemployment Insurance benefits petitioner will be receiving.

CONCLUSIONS OF LAW

Failing to account for fluctuating monthly earned income, the county agency incorrectly 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 January 1, 2013. Upon receipt of acceptable verification, the respondent shall re-determine petitioner's FS eligibility and/or allotment for January, 2013 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 11th day of March, 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 March 11, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability