



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/147440

PRELIMINARY RECITALS

Pursuant to a petition filed February 19, 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 March 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly reduced the petitioner's FS effective March 1, 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, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner has an ongoing FS case for a household of five persons (self, [REDACTED] [REDACTED] their child in common, and two others). On February 14, 2013, the Department issued written notice to the petitioner advising that her FS would decrease from \$657 to \$208 effective March 1, 2013.

The petitioner timely appealed, and aid has been continued pending appeal. The basis for reduction was increased earned income in the household.

3. The petitioner receives \$793.78 in SSI/Social Security for herself. On January 15, 2013, the petitioner reported to the agency that adult household member ██████ had begun at job at ██████. Verification of his wages was requested, and ██████'s first paystub was received on January 30. The Department used that paystub, as the best information available, to calculate his gross income. His undisputed income was calculated as \$12.50 hourly x 80 hours every two weeks, x 2.15 paychecks monthly, for a gross total of \$2,150.00. The total of the petitioner's income and ██████'s income is \$2,943.78.
4. The other relevant income information is that the petitioner pays utilities, pays \$450 in rent, and ██████ pays \$378.40 in child support.
5. For February 2013, the agency budgeted ██████'s income as \$98 weekly from Unemployment Compensation.

DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for March, 2013, onward. The gross income was based on the paystub from January 30, submitted by the petitioner. There is no dispute as to the amounts that were shown on the January paystub, or the agency's arithmetic. The budgeting calculations here were performed prospectively. Prospective budgeting should reflect what the petitioner is likely to receive, on average, each month. *FS Wisconsin Handbook (FSWH)*, 4.1.1, viewable online at www.emhandbooks.wisconsin.gov/fsh/. For earned income that is received biweekly, the agency is directed to develop a biweekly average, and then multiply that figure by 2.15 to account for three-paycheck months. For weekly income, the multiplier is 4.3. 7 C.F.R. §273.10(c)(2).

In calculating the petitioner's March allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county start with gross, rather than net, income, and allow only a limited number of identified deductions from that income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a case with five persons is currently set at \$187, per *FS Wisconsin Handbook*, 8.1.3. Twenty percent of any earned income is then subtracted as the Earned Income Deduction; that deduction was correctly given here. A Dependent Care Deduction is also taken if the couple incurred day care expenses in order to go to work, an Excess Medical Expense Deduction is subtracted for an elderly or disabled person's allowable medical expenses that exceed \$35 per month, and child support paid out garners a deduction. There is no record of the first two expenses here. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of that income. 7 C.F.R. §273.9(d)(6)(ii). Based on a \$450 shelter cost plus the \$442 heating utility standard, the petitioner's shelter costs totaled \$892. This exceeded half of the adjusted income (\$974.19), so no excess shelter cost was deducted in the allotment calculation.

Thus, the March 2013 allotment calculation correctly looked like this:

Gross income	2943.78
Minus Earned Inc. Deduction	- 430.00
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Child Supp. Paid	-378.40
Minus Standard Deduction	<u>-187.00</u>
Adjusted Income	1948.38

Minus Shelter Deduction	-000.00
Net Income	1948.38

The correct allotment for five persons with net income of \$1,948.38 was \$208 in March 2013. *FS Wisconsin Handbook*, 8.1.2, p.17.

CONCLUSIONS OF LAW

1. The Department correctly determined the petitioner’s FS allotment for March, 2013.

THEREFORE, it is ORDERED

That the petition 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 Madison,
Wisconsin, this 20th day of March, 2013

\sNancy J. Gagnon
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 20, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability