



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147594 & 147701

PRELIMINARY RECITALS

Pursuant to petitions filed February 22 and February 25, 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 April 3, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly determined the amount of the petitioner's FS allotments for February through April, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[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 one person. Prior to February 2013, she received a \$180 monthly allotment, based on gross monthly income of \$852. Her case was reviewed in January 2013, and it was determined that her monthly gross income had increased to

- \$918.14. Accordingly, the Department issued written notice to the petitioner advising that her FS allotment would decrease to \$164 effective February 1, 2013.
3. The Department based the \$918.14 income determination on the paystubs (December 14 & 28, 2012), which showed this level of income when averaged (53.38 hours biweekly x \$8.00 hourly) and multiplied by 2.15.
 4. On February 12, 2013, the Department received inaccurate information that the petitioner was going to begin receiving Unemployment Compensation (UC) of \$33 every week. The Department therefore recalculated the petitioner's income for her March and April 2013 allotments as being the \$918.14 from her job *plus* \$141.90 in UC. Accordingly, on February 18, 2013, the Department issued written notice to the petitioner advising that her FS would be reduced to \$122 monthly beginning March 1, 2013.
 5. In preparing for hearing, the Department realized that the petitioner will not be receiving the UC. It therefore deleted the UC income and re-computed the petitioner's FS for March and April by using the \$918.14 income amount. A notice declaring this correction was issued on March 4, 2013. The rent expense of \$475 monthly was used in all computations.
 6. At hearing, the petitioner produced biweekly paystubs for January 2013 showing 52.65 and 52.44 hours, which yields \$903.38 monthly income in a FS calculation. However, the petitioner did not report an income reduction or otherwise indicate dissatisfaction to the Department in January. She also submitted one paystub for February at hearing, but one stub is insufficient to calculate her received February income (which would determine the March benefit). Finally, the petitioner submitted two March paystubs (after filing the February 25 hearing request) which show 48.77 hours on the 3/8/13 paystub and 50.54 hours on the 3/22/13 paystub. This averages out to 49.66 hours biweekly x \$8.00 hourly x 2.15, for monthly income of \$854.16 monthly effective April 1, 2013.
 7. At hearing, the petitioner reported that her rent would increase to \$495 effective May 1, 2013. The Department's representative agreed to update the petitioner's rent amount and income (based on the paystubs submitted at hearing) effective May 1, 2013. This left the FS amounts for February through April for determination by the Administrative Law Judge.

DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for February through April, 2013. The gross income was based on the paystubs from December, submitted by the petitioner. There is no dispute as to the amounts that were shown on the December paystubs, or the agency's arithmetic in averaging the December paystubs. 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 February 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 one to three persons is currently set at \$149, 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 a person 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 latter three 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 \$475 shelter cost plus the \$442 heating utility standard, the petitioner's shelter costs totaled \$917. This exceeded half of the adjusted income (\$292.76) by \$624, so a \$469.00 maximum excess shelter cost was deducted in the allotment calculation.

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

Gross income	918.14
Minus Earned Inc. Deduction	- 183.62
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-149.00</u>
Adjusted Income	585.52
Minus Shelter Deduction	<u>-469.00</u> (\$469 is the maximum)
Net Income	116.52

The correct allotment for one person with net income of \$116.52 was \$164 in February 2013. *FS Wisconsin Handbook*, 8.1.2, p.2. The petitioner did not report an income change until she requested a hearing on February 22/25, and then verified lower income with March paystubs, which can be used to determine April FS income. Thus, the case will be remanded to the Department with instructions to redetermine April 2013 FS based on gross income of \$854.16.

CONCLUSIONS OF LAW

1. The Department correctly determined the petitioner's FS allotments for February and March, 2013.
2. The Department shall redetermine the petitioner's April 2013 FS allotment based on gross earnings of \$854.16.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to redetermine the petitioner's FS allotment for April 2013, in accord with Conclusion of Law #2 above. This action shall be taken within 10 days of the date of this Decision. In all other respects, 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 9th day of April, 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 April 9, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability