



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147666

PRELIMINARY RECITALS

Pursuant to a petition filed February 27, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 2, 2013, at Madison, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner's FS case effective March 1, 2013 (and later determined that the case should re-open with a \$43 allotment).

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: A. Saloma, ES Spec.

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Prior to March 2013, the petitioner had an open FS case for herself and her two minor daughters. She and her children were eligible as a battered alien case. A child in a battered alien case is not

FS eligible after reaching age 18. The petitioner's daughter and household member, ■■■, reached age 18 in May 2012. However, the Department erred by not reducing the household size to two at that time. The Department did not remove ■■■ from the FS household until February 28, 2013.

3. In February, 2013, the Department issued written notice to the petitioner advising that her FS case would be closed effective March 1, 2013. The basis for closure was excess income, based on a household of two persons (petitioner and other daughter). The income used in this closure determination was earnings from the petitioner's job, and a job formerly held by ■■■.
4. The Department later realized that ■■■'s income had ended prior to March 2013, and re-computed the March allotment using only the petitioner's income. On March 8, 2013, the Department issued written notice to the petitioner advising that her FS case would open March 1, 2013, with a March allotment of \$43. The calculation used gross earnings for the petitioner of \$2,120.49 and a \$860 rent expense.

DISCUSSION

The petitioner's household enjoys nonfinancial FS eligibility as a "battered alien" case. The policy instructions for such a case are as follows:

3.12.1 Citizenship ...

To meet the citizenship or qualifying alien requirement for FS , a person must be one of the following:

1. A citizen of the US ...
- 3.A non-citizen with a qualifying immigration status.

[qualifying immigration status includes a "battered alien" with adequate residence duration or work quarters] ...

3.12.1.5 Battered Alien Eligibility

An alien who is the spouse or dependent unmarried child of a U.S. citizen or alien who has been battered or subjected to extreme cruelty under the following criteria is eligible:

1. Aliens (adults or children) who have been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent, or by a member of the household of the spouse or parent who has failed to intervene to stop the battery or extreme cruelty, but only if there is a substantial connection between such battery or cruelty and the need for benefits
2. Aliens whose child or children have been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the alien, ...
3. Alien children whose parent has been battered or subjected to extreme cruelty in the U.S. by the parent's spouse, or by a member of the spouse's family residing in the same house-hold as the victim parent

Do not apply this section if the person responsible for the battery or extreme cruelty continues to reside in the same household or FS group as the person subjected to the battery or cruelty.

Foodshare Wisconsin Handbook (FSWH), § 3.12.1, at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. See also, 7 C.F.R. § 273.4(c)(3)(v).

As the petitioner’s child is a legal alien adult, she is an ineligible alien for FS. However, FS rules continue to require consideration of an ineligible alien’s income with the household’s income:

(3) *Ineligible alien.* The State agency must determine the eligibility and benefit level of any remaining household members of a household containing an ineligible alien as follows:

(i) The State agency must count all or, at the discretion of the State agency, all but a pro rata share, of the ineligible alien's income and deductible expenses and all of the ineligible alien's resources in accordance with paragraphs (c)(1) or (c)(2) of this section.

7 C.F.R. § 273.11c(3)(i). Eventually, the agency realized that █████ no longer had income, so her income was not included in the March allotment calculation. However, she was excluded in counting persons for household size.

The petitioner questions the correctness of the calculation of the FS allotment amount for March, 2013, onward. The gross income was based on the paystubs previously submitted by the petitioner; she submitted no other wage verification at hearing. There is no dispute as to the agency’s arithmetic in averaging the November 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 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 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 the petitioner 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 an \$860 shelter cost plus the \$442 heating utility standard, the petitioner’s shelter costs totaled \$1,302. This did exceed half of the adjusted income (\$773.70) by \$528.30, so the \$469 maximum excess shelter cost was deducted in the allotment calculation.

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

Gross income	2120.49
Minus Earned Inc. Deduction	- 424.10
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-149.00</u>
Adjusted Income	1547.39
Minus Shelter Deduction	<u>-469.00</u> (\$469 is the maximum)
Net Income	1078.39

The correct allotment for two persons with net income of \$1,078.39 was \$43 in March 2013. *FS Wisconsin Handbook*, 8.1.2, p.10.

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 25th 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 25, 2013.

Dane County Department of Human Services
Division of Health Care Access and Accountability