



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/147873

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 05, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Vernon County Human Services in regard to FoodShare benefits (FS), a hearing was held on April 9, 2013, by telephone.

The issue for determination is whether the Department issued the correct amount of FS to the petitioner for March 2013. More specifically, the question is whether W2 income was correctly budgeted.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Tom Miller, Supervisor  
Western Region for Economic Assistance  
300 4<sup>th</sup> Street N  
LaCrosse, WI 54602-4002

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Vernon County.

2. The petitioner has an ongoing FS household of two persons (self and child). The household's monthly income consists of the child's \$422 from Social Security and the petitioner's \$653 W2 benefit.
3. Due to missed W2 work hours, the W2 agency reduced the petitioner's W2 monthly benefit to \$293 for the March 2013 pay period. See, *Wisconsin Works Payment Statement*, dated February 25, 2013, in Exhibit 1. The *Statement* advises the petitioner that she may request a W2 Fact Finding within 45 days to challenge the payment reduction. There is no evidence in this hearing record that the petitioner filed a W2 Fact Finding request.
4. On February 11, 2013, the Department issued written notice to the petitioner advising that her FS allotment for March 2013 would be \$79. In calculating that allotment amount, the Department budgeted income of \$422 Social Security plus \$653, for a total of \$1,075. From the \$1,075 income, the agency subtracted a \$149 FS standard deduction, leaving net adjusted income of \$926. The allotment for a household of two persons with \$926 in net income is \$89.00. The Department then subtracted \$10 from the allotment for an installment repayment of a past FS overpayment. This left an allotment of \$79 to be issued to the petitioner.

### DISCUSSION

The petitioner questions the correctness of the calculation of her FS income for March, 2013. The petitioner's gross income *type* is not in dispute. 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 <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

The petitioner asserts that the county agency erred in calculating her March FS allotment by budgeting the entire amount of W2 benefits to which she was potentially entitled. The parties agree that she actually received a W2 amount that was less than \$653. The parties also agree that the W2 benefit was reduced due to a participation sanction. The Department's instruction to the county agency's regarding W2 benefits is as follows:

#### **4.3.4.1 Unearned Income Introduction**

*7 CFR 273.9(b)(2)*

Unearned income is income not gained by work or delivery of a service or product. Count all unearned income unless it must be disregarded. Some unearned income is disregarded because of source, type, or the reason for receiving it.

...

#### **4.3.4.2 Counted Unearned Income**

1. Tribal **TANF** payments
2. Interest, dividend, and royalty payments if available to a food unit member.

...

13. W-2 payments received under W-2T, or CSJ, or as the custodial parent of an infant (CMC).

...

FSWH, 4.3.4. Subsection 4.3.4.3 goes on to list types of income that are disregarded, and W2 payments are not mentioned therein.

The federal rule at 7 C.F.R. 273.9(b)(3) is more specific. It requires the inclusion of the entire W2 (or its equivalent) payment as unearned income for FS purposes, even if it was reduced "as a result of a sanction." The rule calls for that income to "be attributed in their entirety" to the household. Thus, the county agency's action was correct here.

**CONCLUSIONS OF LAW**

1. The county agency correctly determined the amount of the petitioner's FS allotment for March, 2013, by including a full W2 grant as income.

**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 10th day of April, 2013

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\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 10, 2013.

Vernon County Human Services  
Division of Health Care Access and Accountability