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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/148021

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 15, 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 10, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined the amount of the petitioner's FS for January and February, 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: Mary Hartung, IM-Advanced  
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 as a household of one person. His case underwent a periodic review during September and October, 2012 (due by September 30, 2012). As a result of that review, the agency determined that his monthly FS allotment should be \$150. That

computation was based on federal and state SSI income totaling \$781.78, and a rent expense of \$400.

3. On October 18, 2012, the Department issued written notice to the petitioner advising that he would receive a prorated FS allotment of \$82 for October, and \$150 monthly beginning November 1, 2012. The notice advised the petitioner to file any appeal within 90 days. The petitioner did not appeal until March 15, 2013, which in turn limits this review to benefits issued from January 1, 2013 forward (December benefits were issued before December 15).
4. On December 3, 2012, the Department received a paystub from the petitioner, which indicated that he was receiving gross earned income of \$118.24 every two weeks (or \$254.22 monthly, after the biweekly amount is multiplied by 2.15). The agency then added this to his SSI income from January 2013 onward. On December 5, 2012, the Department issued written notice to the petitioner advising that his FS would decrease to \$76 monthly effective January 1, 2013. The basis for reduction was the increased income.
5. The petitioner reported the end of his Salvation Army job to the agency on December 21, 2012, per Case Comments. On December 24, the Department asked the petitioner for verification of his earned income/employment ending, which was due by January 2, 2013. FS benefits of \$76 were issued to the petitioner for February. On February 4, the Department issued written notice to the petitioner advising that his FS case would close effective March 1, because he had not verified income. On March 1, another earned income verification request was issued to the petitioner regarding employment with the Salvation Army, with a deadline of March 11. On **March 7**, the agency received employer verification that the petitioner was not employed by the Salvation Army.
6. The petitioner began paying the higher rent amount, \$650, on February 1, 2013. He reported his change of address and an increase in his rent expense to \$650 to the agency on February 28, 2013. This reporting date was too late to affect his February allotment, which had been issued on February 6.
7. The agency removed the earned income from the petitioner's FS calculation for March 1 onward. The agency also increased the petitioner's rent expense to \$600. This resulted in the petitioner receiving the maximum FS allotment for one person of \$200 for March 2013. Thus, no issue remains regarding the March allotment.

### DISCUSSION

The petitioner's appeal is not timely with respect to the November or December, 2012 benefits. 7 C.F.R. §273.15.

There is no longer a dispute regarding March 2013 benefits, as the petitioner was issued a total of \$200 for that month, which is the one person maximum.

Turning to the January and February benefits, the petitioner did advise the agency on December 21, 2012 that his job at the Salvation Army had ended.

The federal code instructions for making changes to cases upon receiving a change report are as follows:

(c) *State agency action on changes.* The State agency shall take prompt action on all changes to determine if the change affects the household's eligibility or allotment. If a household reports a change in income, and the new circumstance is expected to continue for at least one month beyond the month in which the change is reported, the State agency shall act on the change in accordance with paragraphs (c)(1) and

(c)(2) of this section. ...

(1) *Increase in benefits.* (i) For changes which result in an increase in a household's benefits, other than changes described in paragraph (c)(1)(ii) of this section, the State agency shall make the change effective no later than the first allotment issued 10 days after the date the change was reported to the State agency. For example, a \$30 decrease in income reported on the 15th of May would increase the household's June allotment. If the same decrease were reported on May 28, and the household's normal issuance cycle was on June 1, the household's allotment would have to be increased by July.

7 C.F.R. §273.12(c)(1). See in accord, *FS Wisconsin Handbook (FSWH)*, §6.1.3.3, available at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. Based on a December 21 change report, the agency *could* have made the income change effective January 1, 2013, *if* the petitioner had timely verified the cessation of employment. However, he did not provide the requested verification until March, when it was too late to do anything about his January and February benefits. *FSWH*, § 6.1.3.3. Therefore, his appeal will be dismissed.

### **CONCLUSIONS OF LAW**

1. The agency correctly determined the petitioner's FS allotments calculation for January and February, 2013.
2. The petitioner's appeal is not timely with respect to his November and December 2012 FS allotment amounts.

**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 12th 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 12, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability