



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148032

PRELIMINARY RECITALS

Pursuant to a petition filed March 13, 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 09, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly terminated the Petitioner's FS benefits effective March 1, 2013, due to household income that exceeded FS program limits.

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: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner completed a Six Month Report form on February 7, 2013. Household size was reported as three.

3. Petitioner's husband WD is employed by [REDACTED]. The agency budgeted his earned income as \$870.00 every other week (\$160 x 4.3 weeks). Unemployment Compensation benefits for WD were added at the rate of \$5.00 per week.
4. Petitioner's daughter CM is 18 years or older and is employed with [REDACTED] at [REDACTED]. She works seasonally during the [REDACTED]. Her hours vary and depend on how often the [REDACTED] are playing at [REDACTED]. Her rate of pay is \$7.80/hour. Her last day for the 2012 season was October 3, 2012. Her first day of the new baseball season was not expected to commence until April 1, 2013. The agency budgeted her income as \$156/week based on an employment verification which indicates that she works up to 20 hours/week (varies) at \$7.80/hour.
5. On March 4, 2013, the agency issued a Notice of Decision to the Petitioner notifying her that her August 6, 2012 application for FS benefits was denied. The agency budgeted earned income of \$156/week for CM, \$116/week UC for CM, \$870 earned income from [REDACTED] every two weeks for WD and \$5/week in UC benefits for WD. The agency budgeted total gross household income of \$3061.60/month.
7. On March 13, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

In determining the amount of FS to be issued each month, the agency must budget all of the household's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. Generally, the agency should use income from the last 30 days to determine prospective income unless that income does not accurately represent anticipated future income. FS Handbook, App. 1.2.4.2. If income fluctuates, the worker must determine a monthly average using prior months' income. Specifically, Appendix 1.2.4.2 provides as follows:

If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. To average widely fluctuating income, use the household's anticipated income including fluctuations anticipated over the certification period. In any case, make every attempt to accurately verify prospective income and clearly document the reasoning for the prospective income estimate.

It is clear that the Petitioner's household has fluctuating income. WD has regular earned income from [REDACTED] during the school year but he has earned income and unearned income (UC) that fluctuates significantly. Similarly, CM is seasonally employed and her hours and income vary significantly when she is employed. Most notably, CM was not employed between October and March due to the seasonal nature of her job. The respondent offered no indication that it had taken this fact into account when calculating the household's income.

This petitioner has appealed this issue previously. I find it troubling that the same issues are surfacing only one year after being addressed by an Administrative Law Judge who found:

Because of the household's fluctuating income, the agency should have used a longer period of past time to get a more accurate indication of average monthly household income. For WD's earned income, the income fluctuates but previous years should provide a more accurate monthly average, considering that the earned income is fairly consistent during the school year and that his UC benefits during the summer fluctuate depending on his earned income. Similarly, the agency should review CM's income over the entire season she was employed to obtain a more accurate average monthly income.

It is clear from her pay statements that she does not regularly work 20 hours/week and that monthly income based on that level is not an accurate reflection of her average monthly income.

FOO/143676, November 7, 2012.

I do not see a distinction between the issues in the instant appeal and those covered in the prior appeal. This family's fluctuating income requires a more long term averaging. The record does not indicate that the respondent has averaged the fluctuating income appropriately.

CONCLUSIONS OF LAW

The agency did not properly consider the Petitioner's household's fluctuating income in determining the household's monthly income and in determining the proper amount of FS benefits.

THEREFORE, it is ORDERED

This matter is remanded to the agency to make a new determination of average monthly income for the Petitioner's household effective March 1, 2013, based on a review of WD's fluctuating earned income and unearned income in previous years or months and a review of CM's fluctuating earned income during her seasonal employment. The agency shall issue a new notice of decision to the Petitioner informing her of the agency's determination. These actions shall be completed within 10 days of the date of this decision.

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 May, 2013

\sPeter McCombs
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 May 9, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability