



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148911

PRELIMINARY RECITALS

Pursuant to a petition filed April 19, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on May 23, 2013, at Wausau, Wisconsin.

The issue for determination is whether the Department erred in reducing petitioner's FoodShare from \$365 to \$17 effective May 1, 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: MaiKou Yang

Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner had previously been receiving FS benefits. His case closed in February 2012. Petitioner filed a new application and his new FS case was opened in July 2012.

3. At all times pertinent to this appeal petitioner lived with [REDACTED] as an unmarried couple with two children in the FS household.
4. Effective 5/1/13 the Department reduced the FS allotment from \$365 to \$17 due to earned income from [REDACTED] being counted that had previously not been reported.
5. Petitioner is employed at [REDACTED] [REDACTED]. The agency budgeted \$2,063.99 monthly gross from [REDACTED] [REDACTED].
6. Petitioner pays child support of \$158 per month.
7. [REDACTED] became employed at [REDACTED] Tavern in March 2012. She was employed there when petitioner applied for FS in June or July 2012. Petitioner did not report [REDACTED]'s income when he applied for FS. This employment was not reported until February 2013. After learning about this income in February 2013 and verifying in March, the agency budgeted a gross earned income from this job of \$1,032 per month. This included \$100 of tips per week (\$430 per month).
8. The budgeted net income was \$2,169.
9. Effective May 1, 2013 the FS allotment was reduced to \$17.
10. Petitioner filed a timely appeal.

DISCUSSION

Petitioner's dispute stems from the earned income budgeted for [REDACTED]. Petitioner does not dispute petitioner's earnings. Petitioner submitted an employee verification form on April 8, 2013 that indicates 15 to 25 hours worked at [REDACTED] at a rate of 7 dollars. It also includes a handwritten answer of "varies" where there is a field to insert amount of cash or tips received. Next to that is another handwritten indication stating "about \$100 J.S." At the time of hearing, petitioner denied writing this. [REDACTED] was also present and denied writing this stating that the "J.S." did not resemble her handwriting. The agency denied any knowledge of where the handwritten indication of \$100 in tips came from. This is critical because this is what the petitioner disputes. Petitioner, instead, claims that the amount of tips for [REDACTED] is around \$18 per week. He concedes the actual base wages paid to [REDACTED] and his own budgeted by the agency.

I affirm the agency decision to rely on the employee verification form indicating the \$100 in tips per week. I do this for several reasons, primarily based on what I perceive as a lack of credibility on the part of petitioner and [REDACTED] (now his wife). It is apparent that [REDACTED] worked at [REDACTED] for an entire year before the employment was even disclosed to the agency. Petitioner testified that he did not report the income because the amount at that time was minimal and did not exceed the amount that required reporting. But, petitioner overlooks the fact that he filed a new application in June or July of 2012. This was not an issue of an ongoing duty to report and increase but a duty to report all household income at the time of application. I believe that petitioner likely excluded that information with the intent to get a larger FS allotment.

Furthermore, while I have no evidence as to where the notation of \$100 came from, I find it unbelievable that an agency worker inserted that on the form unless it was indicated by petitioner or his wife. But, even then, I cannot believe that a county worker would have initialed that notation with [REDACTED]'s initials. If I accept petitioner's story, that there was no such notation when the form was turned in to the agency, then I must also accept that explanation for the notation. I do not. Finally, petitioner's demeanor during the hearing was less than civil, accusatory, and aggressive. I interpret this as inappropriate defensiveness characteristic of a lack of candor. Given that, I find that the agency's reliance on this notation was reasonable and not an error. If that notation is incorrect, petitioner should provide the agency with updated and credible documentation and perhaps the agency may again update the allotment.

Petitioner offered no credible rebuttal of the agency's case.

CONCLUSIONS OF LAW

The Department did not err in reducing the FS allotment to 17 dollars based on the [REDACTED] income reported on the EVFE.

THEREFORE, it is ORDERED

That this appeal 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 11th day of June, 2013

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 11, 2013.

Marathon County Department of Social Services
Division of Health Care Access and Accountability