



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/149826

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 06, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on July 10, 2013, at Milwaukee, Wisconsin. The record was held open for a period of 10 days to allow for the submission of further documentation.

The issue for determination is whether respondent provided petitioner with correct FS benefits in May and June of 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: 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 received FS in the amount of \$526.00 in April, 2013, FS in the amount of \$153.00 in May, 2013, and FS in the amount of \$187 in June, 2013.

3. On May 1, 2013, petitioner notified respondent that petitioner's husband was no longer receiving Unemployment Compensation benefits (UCB). Petitioner's husband received UCB in the amount of \$324.00 on April 15, 2013; following a pendency period, petitioner's husband's UCB recommenced on May 20, 2013. Exhibit 3.
4. Respondent notified petitioner on May 29, 2013, that her monthly FS benefits would be reduced from \$526.00 to \$263.00 effective July 1, 2013. This allotment for July, 2013, is based upon a determination that petitioner's 3-person household's unearned income is \$1,889.20, which includes UCB.

### DISCUSSION

When an FS recipient reports a change, the agency handles it differently depending on whether the change will result in an increase or a decrease in FS. 7 C.F.R. §273.12(c). If the change will result in a decrease in FS, the agency should issue a notice informing the client of the decrease effective the next possible month. 7 C.F.R. §273.12(c)(2)(i). The agency must then verify the change prior to the next recertification.

If a person reports a change that will result in decreased FS, the general rule is that the decrease will take place in the month after the change is reported. 7 C.F.R. §273.12(c)(2)(i). The FS Handbook, §6.1.3.6 requires:

For reported changes that result in a decrease in benefits, process the change to allow for adequate negative notice to be issued to the customer. If verifications are not received within 10 days, and the FS case is not closed for at least one day, make the change effective the first of the month following the month verifications are received.

If a person reports a change that will result in increased FS, the general rule is that the increase will take place in the month after the change is reported. 7 C.F.R. §273.12(c)(2)(i). The FS Handbook, §6.1.3.6 requires:

All reported changes that result in an increase in the FS benefit including person additions, increases in expenses, etc., will be effective the first of the month following the report month if required verifications are received within 10- days of the request for verification.

The FS rules require changes to be made in the month after the change is reported, not the month that the change occurs.

Petitioner did not report her May, 2013, UCB income to the county, though she did report the potential that the UCB would be discontinued. Electronic Case Comments note that petitioner called the respondent on April 30, 2013, and May 1, 2013, regarding FDS benefits. On May 22, 2013, Case Comments indicate that respondent, "...removed UIB – PP entitled to \$526.00 for June but will only receive \$187 – requested aux in the amount of \$339." See, Exhibit 3. On May 28, 2013, Case Comments state, "aux \$339.00 denied – spouse still receives unemployment \$324 wkly..." *Id.* I note that it does not appear that petitioner was receiving UCB weekly between April 15, 2013 and May 20, 2013. Exhibit 3.

As noted in Finding of Fact no. 2, above, petitioner received \$524 in FS benefits in April, 2013. This was reduced to \$153.00 for May. The record contains no notice regarding this reduction, nor any budget regarding the determination that \$153.00 was the appropriate allotment. No testimony was provided in this regard at hearing. Similarly, the respondent has not established any basis for the \$187.00 allotment for June, 2013. The only notice and budget information pertains to the May 29, 2013 notice that the July,

2013 allotment would be \$263.00. Despite receiving FS benefits in the amount of \$187.00 in June, 2013, the respondent's May 29, 2013 specifies that petitioner's FS benefits would be *reduced* from \$524.00 to \$263.00 effective July 1, 2013. It would appear that the July allotment would actually constitute an *increase*. This confusing background illustrates a decrease in benefits from April to May, 2013; an aborted attempt to increase (via auxiliary payment) the May, 2013 FS benefits; an increase in FS benefits from May to June, 2013, and a subsequent increase in FS benefits from June to July, 2013.

Unfortunately, I am unable to confirm, based upon the record before me, how the respondent determined petitioner's FS benefits for May and June of 2013. As a result, I cannot conclude that the county correctly handled petitioner's case. Case Comments indicate that the respondent processed the decrease in FS when it discovered the re-institution of the UCB income in May, 2013. However, the newly determined FS allotment was not commenced until July, 2013. See Exhibit 2, Notice dated 5/29/2013. The county processed the change to be effective after the net possible month. FS policy states that changes are to be instituted in the month following the change report.

I will remand this matter to the respondent, and ask that the respondent re-evaluate its FS determination for the months of May and June, 2013. It may very well be the case that the issued amounts for those months are correct; I am simply unable to reach that conclusion based on the record before me.

### **CONCLUSIONS OF LAW**

The respondent has not established that it correctly calculated petitioner's FS in May and June of 2013.

**THEREFORE, it is**

**ORDERED**

That this matter be remanded to the respondent to re-determine petitioner's FS allotment for the months of May and June, 2013. New notices, with appeal rights, shall be provided to the petitioner indicating how the respondent calculated petitioner's household income and how the respondent determined the amount of petitioner's FS allotment. All actions required by this Order shall be completed within ten days following issuance 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).

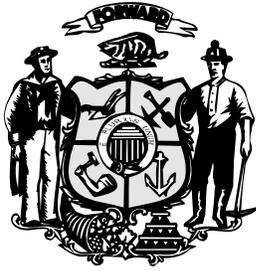
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson 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 August, 2013

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Wayne J. Wiedenhoef, Acting Administrator  
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The preceding decision was sent to the following parties on August 9, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 12, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability