



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/149984

PRELIMINARY RECITALS

Pursuant to a petition filed June 14, 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 July 17, 2013, by telephone.

The issues for determination are (1) whether the agency correctly determined petitioner's earned income, and (2) whether the agency correctly prorated June, 2013 FS.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Katherine May
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner had an FS renewal due by the end of May, 2013. She filed the renewal application in early May. On May 10, 2013, the agency sent petitioner a notice requesting verification of her earned income. The deadline was May 20. The notice was sent to petitioner's correct address, and her name was spelled correctly.

3. Petitioner did not see the verification request. Her FS closed because she did not complete the renewal verification. On June 14 petitioner provided her two most recent paystubs. The case was reopened effective that date.
4. Earned income on the two biweekly paystubs was \$796. The county thus budgeted \$855.70 as monthly income (\$796 times 1.075 because there are slightly more than four weeks per month).
5. Based upon that income the county determined that petitioner's monthly FS allotment would be \$262. However, it issued just \$148 for June because the benefits were prorated from June 14.

DISCUSSION

An FS recipient must do a periodic review to continue eligibility. 7 C.F.R. §273.14. Failure to complete a review results in the closing of the case. If the review is not completed until after the case is closed, the FS are not issued in full. Instead, the case is treated as a new application, and benefits are to be prorated as of the date of the review. 7 C.F.R. §273.14(e)(2); FS Handbook, Appendix 2.2.1.4. FS shall not be prorated if the delay is caused by agency error. 7 C.F.R. §273.14(e)(1).

The Handbook, App. 2.2.1.4 addresses petitioner's situation:

If FS close for lack of verification after a timely review and the household takes the required action within the calendar month following the certification period, the agency shall reopen FS and prorate benefits from the date the household took the required action. The new certification period will begin the month after the month the review was due.

Petitioner testified that she did not see the income verification request. However, it was sent to the correct address and it did not return to the agency. I cannot find that the delay was caused by agency error. Petitioner surmised that a new mailman did not mail the letter because her mailbox only has the last part of her hyphenated name on it, but it makes no sense that he would do so. Furthermore, if he refused to mail the letter for that reason, he likely would return it to the sender.

I must conclude that the agency correctly prorated petitioner's FS because her verification was not provided until June 14, after the FS were already closed.

The second issue is whether the FS were calculated correctly. FS allotments are based upon a household's prospective income, meaning that the agency must estimate the household's income for the month in which FS are to be received. FS Handbook, Appendix 4.1.1. Income from the past 30 days typically is used to make the estimate, but if income fluctuates, the worker must determine a monthly average using prior months' income. 7 C.F.R. §273.10(c)(1) and (2); Handbook, App. 1.2.4.2.

Petitioner testified that her income on the two checks she provided was inflated, and in fact it appears that the June 7 check was substantially higher than normal based upon the paystub from July that petitioner supplied at the hearing. A look at the year-to-date income on the June 7 paystub reveals that monthly income averages \$759.16. While year-to-date income is not always an accurate measure because income and hours can increase, it is evident that the two paystub snapshot used by the agency overstated petitioner's income. This is revealed more so by the income amounts in the two paystubs after June 7.

Petitioner explained that she now has had her hours reduced. She should file a change report so that her FS for August can be re-determined.

CONCLUSIONS OF LAW

1. The agency correctly prorated petitioner's June, 2013 FS because her renewal was not completed until June 14, 2013.
2. The agency used incorrect income in determining petitioner's FS after the review.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to re-determine petitioner's FS retroactive to June 14, 2013 by changing petitioner's monthly earned income from \$855.70 to \$759.16. The agency shall take the action and issue appropriate supplemental FS for June through the present within 10 days 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 18th day of July, 2013

\sBrian C. Schneider
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 July 18, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability