



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/150059

PRELIMINARY RECITALS

Pursuant to a petition filed June 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 July 17, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly terminated Petitioner’s FoodShare benefits effective June 1, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Belinda Bridges, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On May 14, 2013, the agency sent Petitioner a notice indicating that effective June 1, 2013, her FoodShare benefits would be ending because her household income exceeded program limits. (Exhibit 7, pgs. 22-27)
3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 13, 2013. (Exhibit 1)
4. There are four people in Petitioner’s household and the only person who is disabled is Petitioner. (Testimony of Petitioner)
5. There are no elderly or blind people in Petitioner’s household. (Id.)
6. Petitioner pays rent in the amount of \$600 per month. (Testimony of Petitioner) Exhibit 2, pg. 3; Exhibit 7, pg. 19)
7. Petitioner receives Social Security Disability Income. For June, Petitioner received \$468.00. (Exhibit 6)
8. Petitioner lives with her daughter who receives child support in the amount of \$387 per month. (Testimony of Petitioner)
9. Petitioner’s husband received Unemployment Insurance Benefits (UIB) in the amount of \$175.00 per week. (Testimony of Petitioner)
10. Petitioner’s husband worked at Westaff U.S.A, Inc. and received a weekly paycheck. His hours fluctuated between zero hours per week to 40 hours per week. His rate of pay fluctuated between \$8.00 an hour and \$10.00 per hour. (Exhibit 7, pg. 4)

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has a member over age 60. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FSH § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH §4.1.1.*

If income fluctuates, it is to be averaged over the certification period. *FSH §1.2.4.2* Such income is to be verified and in the absence of such verification, the agency is to use the best information available, i.e. check stubs over 30 days old, or customer statement. *Id.*

Because Petitioner’s husband’s income fluctuates, it must be averaged per *FSH §1.2.4.2* above.

Exhibit 7 shows information for 11 weekly pay checks that covered a period of 13 weeks between March 8, 2013 and May 31, 2013. The checks were for the following amounts:

- \$254.00
- \$320.00
- \$192.00
- \$320.00
- \$240.00
- \$112.00
- \$240.00
- \$400.00
- \$400.00
- \$240.00

\$222.50

\$2940.00 total pay for 13 weeks

$\$2940 \div 13 \text{ weeks} = \$226.15 \text{ average income per week}$

Petitioner's gross monthly income is then calculated as follows:

Petitioner's husband's earned income:

$\$226.15 \text{ per week} \times 4.3 \text{ average weeks per month} = \972.45

Unemployment Benefits:

$\$175.00 \text{ per week} \times 4.3 \text{ average weeks per month} = \752.50

\$468.00 SSDI benefits
 +\$387 child support payments
 +\$752.50 Unemployment Benefits
 +\$972.45 earned income

\$2579.95 Total Gross Income

In order to be eligible for FoodShare benefits, a household's income must be at or below 200% of the Federal Poverty Level or FPL. *FSH, at § 4.2.1.1* For a household of 4, 200% of FPL is \$3842. *FSH, at §8.1.1.1*

Petitioner's gross income of \$2579.95, meets the categorical eligibility limits for FoodShare. However, the remaining issue is then, whether Petitioner's net income allows for a FoodShare allotment.

Once a household passes the gross income test the following deductions are applied (*FSH, at § 4.6*):

(1) a standard deduction –

This is \$160 per month for a household of 4 people, *7 CFR § 273.9(d)(1)*:

(2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;

For Petitioner's household, this would be 20% of her husband's earned income or $\$972.45 \times 20\% = \194.49

(3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;

(4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and

(5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5)*.

The heating standard utility allowance (HSUA) is \$442 per month.

There is a cap of \$469 on the shelter cost deduction, *unless* a household has an elderly, blind or disabled member.

FSH, §§ 4.6.7.1 and 8.1.3.

The term ‘disabled’ is a term with a definition as to the FoodShare program:

3.8.1.1 EBD Introduction

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: [SSA](#), [MA](#), [SSI](#) or SSI related MA, Railroad Retirement Board ([RRB](#)).

FSH, §3.8.1.1.

Applying the foregoing to Petitioner we have the following net income calculation, effective September 1, 2012:

Gross Income	\$2579.95	Rent	\$600.00
Earned Income Deduction	-\$194.49	HSU	\$442.00
Standard Deduction	-\$160.00	50% Net income	-\$1112.73
No Medical Expenses exceeding \$35			
No Dependent Care Deduction		Excess Shelter Expense	\$0
<hr/>			
Net Income	\$2225.46		
Excess Shelter Expense	-\$0		
<hr/>			
Net Income	\$2225.46		

Individuals, in a household of 4, with a net income of \$2225.46, do not qualify for a FoodShare allotment. *FSH §8.1.2.*

At the hearing, Petitioner indicated that her situation has changed since May 2013, and that her husband is no longer working. If that is the case, Petitioner needs to report this to the agency and reapply for benefits.

CONCLUSIONS OF LAW

The agency correctly terminated Petitioner’s FoodShare benefits effective June 1, 2013.

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 Milwaukee,
Wisconsin, this 23rd day of July, 2013.

\sMayumi M. Ishii
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 23, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability