



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/150246

PRELIMINARY RECITALS

Pursuant to a petition filed May 16, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Department of Health Services, by Milwaukee Enrollment Services, in regards to the discontinuance of FoodShare benefits (FS), a telephone hearing was held on August 1, 2013, at Milwaukee, Wisconsin. A hearing set for July 18, 2013, was rescheduled at the petitioner's request. At the request of the petitioner, the record was held open for 15 days for her to submit additional documentation and 15 more for the agency to reply to the new documents, if necessary. No documentation was subsequently received from the petitioner, so no reply was made by the agency representative.

The issue for determination is whether the county agency correctly discontinued the petitioner's FS allotment effective June 1, 2013, due to income in excess of 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: Lee Yang, HSPC
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is the casehead of a five person household composed of herself and her four minor children; and the household was receiving \$556 per month in FS in each of the months of February, March, April, and May, 2013.
2. On or about May 3, 2013, the petitioner reported to the agency that she had begun working Monday – Friday from 8:30 to 5:30 and that she is earning \$45,000 per annum, or \$3,750 per month. No hourly wages were reported.
3. The petitioner verified and corroborated that her income would be \$45,000 per annum, by providing to the agency a March 7, 2013, letter entitled “Offer of Employment” from [REDACTED], offering her a job as Administrative Director for said private organization, with her hours of work “Based on Operating Needs” and her compensation stated as \$45,000 annually”. See, Exhibit FOO-5.
4. On May 7, 2013, the county agency issued a Notice of Decision to the petitioner informing her that her FS would be discontinued, effective June 1, 2013, because her countable income of \$2,802.50, after allowable deductions, exceeded the net income limit for eligibility.
5. On or about May 16, 2013, the petitioner filed a request for a hearing contesting the discontinuance of her FS and requesting that benefits continue pending the hearing. Subsequently, the Division ordered FS restored pending the hearing outcome.
6. The Department determined that the petitioner was not entitled to any FS in June, 2013, as computed in Exhibit FOO-4. The agency determined her gross income was \$3,750 per month, minus an earned income deduction of \$750, the standard deduction of \$187, and an excess shelter expense deduction of \$10.50 derived from shelter costs of \$975 plus the utility standard of \$442, minus 50% of adjusted gross income (i.e., \$1,417 - \$1,406.50 = \$10.50). Net adjusted (countable) income was determined to be \$2,802.50.
7. The record was held open for the petitioner to submit documents that she said would establish her income in the new job was actually \$40,000 per annum, not \$45,000 per annum.
8. The petitioner does not have any out-of-pocket dependent care expenses or that she is elderly or disabled with regular out-of-pocket medical expenses exceeding \$35 per month. Her rent was \$975 in June, 2013.
9. The petitioner did not submit any documentation corroborating that her income was actually \$40,000 per annum in the open records period.

DISCUSSION

The net income limit for a 5 person FS household is \$2,251 per month after allowable deductions. *FoodShare Wisconsin Handbook*, App. §8.1.1. In determining the amount of FS to be issued each month, the county must budget all of the recipient’s nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$187 per month for a five-person household. 7 C.F.R. §273.9(d)(1); *FoodShare Wisconsin Handbook*, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); *FoodShare Wisconsin Handbook*, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); *FoodShare Wisconsin Handbook*, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); *FoodShare Wisconsin Handbook*, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); *FoodShare Wisconsin Handbook*, App. 4.6.7.

In a fair hearing concerning the sufficiency of FS issued, the burden of proof is on the Department to demonstrate that it correctly computed the petitioner's FS eligibility, and the petitioner must then rebut this evidence with her own evidence showing the agency was incorrect.

Here, the agency relied upon documentation of the petitioner's estimated income that was provided directly by her employer. See, Exhibit FOO-5. This information was the bedrock for the agency estimate of her gross monthly income. The petitioner disputed this determination, and testified that she actually earned \$40,000 per annum and not the \$45,000 gross income per annum amount obtained by the agency from the petitioner's employer. She testified that she could prove it, and would do so during the open records period. That period elapsed 10 days ago, and the Division never received any such evidence.

I have reviewed the evidence and the agency computations, and I can find no error in the agency's action to discontinue the petitioner's FS in June, 2013, due to income in excess of program limits. Nor has the petitioner established any error in fact occurred that was relevant. Under the facts presented in this record, the agency action to discontinue FS must be sustained.

CONCLUSIONS OF LAW

That the Department correctly estimated the petitioner's gross monthly income based upon her verification document provided on May 7, 2013, and determined that she was no longer eligible for FS effective June 1, 2013, due to countable income in excess of program limits.

THEREFORE, it is **ORDERED**

That the petition for review herein be, and the same hereby 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 26th day of August, 2013

\sKenneth D. Duren, Assistant Administrator
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 August 26, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability