



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/150681

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 13, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 30, 2013, at Appleton, Wisconsin. Hearings scheduled for August 5, 2013, September 25, 2013, and October 21, 2013, were rescheduled at the petitioner's request.

The issue for determination is whether the respondent correctly determined petitioner's income and FS allotment.

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: Lisa Watkins

Outagamie County Department of Human Services  
401 S. Elm Street  
Appleton, WI 54911-5985

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County; she is the case head of 2-person FS household.

2. Petitioner was employed by [REDACTED] in at least May and June of 2013. Petitioner's paystubs dated 5/9/13, 5/23/12, and 6/6/13 indicate that petitioner averaged 80.50 hours worked per pay period, including 1.72 hours of overtime and average monthly commissions of \$187.92. Based upon the foregoing, the respondent calculated average monthly gross income of \$2,378.85 as of July 1, 2013. Exhibit 2.
3. The respondent sent notice to the petitioner on July 1, 2013, indicating its monthly income calculation, and specifying that petitioner's FS would decrease from \$115.00 to \$16.00.
4. Petitioner timely appealed the FS decrease.

### **DISCUSSION**

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 \$152 per month for a household of two people. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin Handbook, Appendix 8.1. 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, § 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, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FoodShare Wisconsin Handbook, § 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, § 4.6.7.

At hearing, the petitioner did not dispute the income calculation prepared by the respondent. However, the respondent identified its own error in applying deductions, which specific reference to the dependent care deduction. I note that the actual budget was not submitted as an exhibit, and thus the hearing record is incomplete in this regard; as such, I am unable to recreate and or confirm the credibility of the respondent's calculations.

In light of the respondent's concession that it may have erred with regard to application of the dependent care deduction, this matter shall be remanded to the respondent to review and re-determine petitioner's FS eligibility and allotment.

### **CONCLUSIONS OF LAW**

The respondent did not properly calculate petitioner's counted monthly household income when it failed to correctly apply appropriate deductions to petitioner's gross monthly income.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the respondent to review and re-determine the petitioner's eligibility effective August 1, 2013, taking into account any and all deductions applicable to petitioner. The respondent shall issue a new Notice of Decision to the Petitioner with its determination and shall issue new appeal rights in that notice to the Petitioner. These actions shall be completed within 10 days of the date 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 14th day of November, 2013

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\sPeter McCombs  
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 November 14, 2013.

Outagamie County Department of Human Services  
Division of Health Care Access and Accountability