



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/150785

PRELIMINARY RECITALS

Pursuant to a petition filed July 17, 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 August 13, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly terminated FS benefits to the Petitioner effective May 1, 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: Jose Sylvestre

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. The Petitioner's household size is three.
2. On April 23, 2013, the agency processed the Petitioner's online renewal.

3. On April 26, 2013, the Petitioner submitted pay statements from the Petitioner's husband's employer. For the period of March 23, 2013 – April 18, 2013, the Petitioner's husband had gross income of \$1,411.
4. On April 29, 2013, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of Petitioner's employment.
5. On May 8, 2013, the Petitioner's employer, All About Learning, submitted an employment verification reporting that the Petitioner is employed as a day care teacher 25 – 30 hours/week at 9.25/hour. Her start date was May 7, 2013.
6. On May 9, 2013, the agency received verification that Petitioner's employment at Baby Steps Day Care ended on April 29, 2013 and the date of her final paycheck was May 3, 2013. On May 8, 2013, the Petitioner submitted two pay statements from Baby Steps for the period of March 31, 2013 – April 27, 2013 showing gross income of \$544.77 for the period.
7. On May 8, 2013, the agency issued a Notice of Decision informing the Petitioner that her FS benefits were terminated effective May 1, 2013.
8. Petitioner's rent expense is \$500/month.
9. On July 17, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

In determining the amount of FS to be issued each month, the agency 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 \$149 per month for a one-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 allotments, and the petitioner must then rebut this evidence with his own evidence showing the agency was incorrect.

In this case, the Petitioner did not dispute the agency's assertions regarding monthly household income. Based on the pay statements and employment verifications of the Petitioner and her husband's employers, the agency calculated gross monthly income of \$2,610.63. This is under the gross income limit. With the standard deduction of \$149/month and an earned income deduction of \$522.12. The Petitioner is not eligible for a shelter expense deduction with rent of \$500. The Petitioner's net monthly income is \$1,939.51. The net income limit for a household of three is \$1,591. Thus, the agency correctly determined that the Petitioner was not eligible for FS benefits effective May 1, 2013 because household income exceeded the program's net income limit.

I note that the Petitioner testified at the hearing that her hours and income have recently been reduced. The Petitioner was advised to submit all changes to the agency so that the agency can make a determination of eligibility based on the change in circumstances.

CONCLUSIONS OF LAW

The agency properly terminated the Petitioner's FS benefits effective May 1, 2013 based on the Petitioner's household income at the time of the determination.

THEREFORE, it is

ORDERED

That the petition be, and 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 Milwaukee,
Wisconsin, this 11th day of September, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 11, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability