



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/151492

PRELIMINARY RECITALS

Pursuant to a petition filed August 21, 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 October 01, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly terminated the Petitioner's FS benefits effective September 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. Petitioner's household size is four.

2. On July 16, 2013, the Petitioner called to request renewal of FS benefits. The application was completed and pended for signature and employment verification. The Petitioner reported his wife's earned income.
3. On July 17, 2013, the agency issued a Notice of Action and Proof Needed to the Petitioner requesting a signature as well as employment verification for [REDACTED] and [REDACTED]. The due date for the information was July 26, 2013.
4. On July 25, 2013, the agency received an employment verification from [REDACTED] verifying the Petitioner's wife is employed an average of 23 hours/week at \$7.45/hour. Her gross wage is calculated for FS purposes as \$736.80/month (\$171.35/week x 4.3 weeks).
5. On August 1, 2013, the agency received an alert regarding a discrepancy in wages between wages reported and wages reflected in the State Wage Record for Petitioner's earned income from [REDACTED] for the 1st and 2nd quarters of 2013. The agency updated the case to reflect wages as reported in the State Wage Record. Petitioner's gross wages were calculated as \$2,900/month based on the state wage record.
6. On August 2, 2013, the agency issued a Notice of Decision to the Petitioner terminating FS benefits effective September 1, 2013 due to income exceeding the program limit.
7. On August 21, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

As part of the FS application process, the agency must request and receive verification of a household's earned income, as this is a means-tested program. The petitioner's household had earned income. The agency must give the client at least 10 days to supply requested verification from the verification request, and 30 days from the application date. Handbook, §§ 1.2.1.2, & 2.1.3.7, online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. The responsibility for supplying verification then rests on the recipient. Id., §1.2.1.3. When requested income verification is not timely received, the agency may correctly deny an application or close a case undergoing review. Id., §1.2.4.1; 7 C.F.R. §273.2(g)(3) (January 2010).

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 \$160 per month for a four-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 this case, the agency budgeted only the Petitioner's wife's income for August 1, 2013 while the case was pended for the Petitioner's employment verification. Based on the earned income reported, the household was eligible for \$668 effective August 1, 2013. When the agency did not receive employment verification for the Petitioner, it used the state wage record to determine Petitioner's earned income. Based on that information, the agency determined the Petitioner's monthly household income was \$3,636.80. The gross income limit for a household of four is \$3,842/month. Because the Petitioner's household income met the gross income eligibility test, the agency applied a standard deduction and earned income deduction. The Petitioner's net adjusted income was \$3,749.44. The net income limit for

a household of four is \$1,921. Because the Petitioner's net adjusted income was over the net income limit, the agency determined the Petitioner was not eligible for FS benefits effective September 1, 2013.

The Petitioner testified that his income in August was more than he usually makes due to more overtime. He also testified that he had faxed his pay statements to the agency by the verification due date. The agency has no record of receiving the pay statements and the Petitioner had no documentation to verify that they were faxed. The Petitioner indicated that he did not know until the hearing that the agency had not received his fax.

As noted above, the agency is required to budget all non-exempt income in determining eligibility for FS. Petitioner's income from overtime is not exempt. Petitioner did not dispute that the amount of earned income the agency budgeted for him was inaccurate; rather he testified that it was more than he normally earns due to overtime. I reviewed the agency's budget calculations and, based on the information available regarding Petitioner's earned income, the agency correctly determined the monthly household income exceeded the net income limit of \$1,921.

The Petitioner was advised at the hearing that he should reapply and submit his pay statements. If his income has decreased due to less overtime, he may be eligible for benefits. Petitioner was advised that any new determination regarding benefits would have new, separate appeal rights.

CONCLUSIONS OF LAW

The agency properly denied FS benefits to the Petitioner effective September 1, 2013 due to household income exceeding program limits.

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 29th day of October, 2013

\sDebra Bursinger
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 October 29, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability