



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/151973

PRELIMINARY RECITALS

Pursuant to a petition filed September 10, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 11, 2013, at Madison, Wisconsin. At the request of the parties, the record was held open for the submission of additional information from the county agency to the Division of Hearings and Appeals (DHA) with an opportunity for a petitioner response to DHA. The county agency submitted the information to DHA which was received at DHA on November 26, 2013. However, there was no indication that county agency's information was also sent to the petitioner (the county agency should now send a copy to petitioner). As a result, there was no response by the petitioner to DHA.

The issue for determination is whether the county agency met its burden of proof to establish that it correctly and accurately discontinued the petitioner's FoodShare (FS) benefits effective September 1, 2013, due to household income above the FS net income eligibility limit for a group of two.

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, Room 651
Madison, Wisconsin 53703

By: Rommel Tijerino, ESS
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County who resides with his wife, [REDACTED].
2. The petitioner applied for FoodShare (FS) benefits on or about March 25, 2013 for a FS household of two.
3. The county agency approved FS application, and issued FS benefits to petitioner for a group of two.
4. During August, 2013, petitioner contacted the county agency to ask questions regarding the self-employment business that he and his wife conduct from their home.
5. The county agency sent six self-employment report forms (SEIRFs) to petitioner for himself and his wife.
6. The self-employment business is an environmental consulting business.
7. Based upon the SEIRFS, the petitioner's gross income is about \$2,373.84 as of September, 2013. The petitioner's wife's gross income is about \$1,880.86 as of September, 2013 for a gross household income of \$4,254.70.
8. The county agency sent a September 5, 2013 Notice of Decision to the petitioner stating that his FS benefits would discontinue as of September 1, 2013, due to September, 2013 household net income of \$3,254.76 which was above the FS net income eligibility limit of \$1,261. That notice also indicated that the petitioner's October, 2013 household net income was \$3,251.176, and the net income eligibility limit increased to \$1,293.00 as of October, 2013. See Exhibit 2.
9. On September 19, 2013, the county agency received verification from petitioner that his total mortgage with escrow payment was \$1,101.60 (\$747.06 for principal and interest, and \$354 for escrow). See Exhibit 1.
10. On November 26, 2013, the Division of Hearings and Appeals (DHA) received from ESS Tijerino the petitioner's FS budget screens for June, September, and October, 2013 FS shelter expense/deduction policy. See above Preliminary Recitals.
11. The June, 2013 screen included a shelter expense deduction, however, the September and October, 2013 budget screens inaccurately included no shelter expense when Finding of Fact #9 above petitioner verified a total monthly mortgage payment of \$1,101.60.

DISCUSSION

Based upon the above findings of fact, the county agency did not meet its burden of proof to establish that it correctly and accurately calculated the petitioner's FoodShare (FS) eligibility to discontinue petitioner's FS benefits as of September 1, 2013. As a result, the county agency needs to re-calculate the petitioner's net household income including petitioner's shelter expense deduction, and then issue a revised Notice of Decision (and a revised FS budget screen) to the petitioner providing a detailed statement of petitioner's FS income eligibility (whether petitioner's FS household was or was not above the FS net income limit) retroactive to September 1, 2013.

THEREFORE, it is ORDERED

The matter is remanded to the county agency with instructions to re-calculate the petitioner's FS net household income including petitioner's shelter expense deduction, and then issue a revised Notice of Decision (and a revised FS budget screen) to the petitioner **by January 3, 2014** providing a detailed statement of petitioner's FS income eligibility (whether petitioner's FS household was or was not above the FS net income limit) retroactive to September 1, 2013. If the petitioner believes that new, January, 2014 FS notice is incorrect he must file a new FS appeal at DHA and include a copy of that new FS notice.

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, Room 651, 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 20th day of December, 2013

\sGary M. Wolkstein
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 December 20, 2013.

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