



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152693

PRELIMINARY RECITALS

Pursuant to a petition filed October 10, 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 December 11, 2013, by telephone. A hearing set for November 13, 2013, was rescheduled at the petitioner's request.

The issues for determination are whether the Department (1) correctly computed the petitioner's wife's earnings, and (2) correctly reduced the allotments for September and November 2013.

There appeared at that time 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: Katherine May, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner has an ongoing FS case for a household of two persons (self and wife). The petitioner's only income is his Social Security benefit in the undisputed amount of \$445.60

monthly. His wife also receives a \$644.60 monthly Social Security benefit. At the end of July, 2013, the Department received notification that the wife's income from employment at New Health Services (New Health) had increased to the amount of \$402.61 monthly. This added up to total household income of \$1,493.11 monthly. That level of income caused the household's FS monthly allotment to drop from \$240 to \$111 beginning September 1, 2013. *See*, Exhibit 2B, notice dated July 31, 2013.

3. The petitioner's wife is paid an undisputed \$9.37 hourly for her work. Prior to September 2013, the Department believed that she was working 5 hours per week. As of September 2013, she was working 10 hours per week. This results in average monthly earnings of \$402.61 ($\9.37×20 hours biweekly $\times 2.15 = \$402.61$).
4. The allotment went up to \$114 for October 2013, due to an annual FS cost of living increase.
5. On October 7, 2013, the Department issued written notice to the petitioner advising that the allotment would decrease to \$94 effective November 1, 2013. The income and deduction figures used by the Department for the November calculation were unchanged from the figures used in the September 2013 calculation. *See*, Exhibit 2A.

DISCUSSION

Regarding September: The petitioner questioned the change in the amount shown for his wife's earnings. At hearing, his wife agreed that she works 10 hours per week at \$9.37 per hour. This results in average monthly earnings of \$402.61, which is what the Department budgeted. Thus, the Department's action to reduce benefits on September 1, 2013, was correct.

Regarding November: The federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5, section 101) included an appropriation for an across-the-board increase in FoodShare allotments of 13.6% as an economic stimulus measure. The appropriation increase was limited as to time and a rule formulation involving the "thrifty food plan." The federal FS statute, at 7 U.S.C. § 2027, states that the Secretary of the Department of Agriculture shall limit allotments so that they "are not in excess of the appropriation for ...[the fiscal year]." When the Secretary determines that the participants' allotments will exceed the appropriation, the Secretary must direct the states to reduce allotments to align with the appropriation. *See*, in accord, federal code at 7 C.F.R. § 273.10(e)(4). The Secretary has made that determination, and has announced that the 13.6% increase must expire effective October 31, 2013. That declaration is reflected in a U.S. Department of Agriculture memo, "SNAP – Fiscal Year 2014 Cost-of-Living Adjustments and ARRA Sunset Impact on Allotments," issued August 1, 2013, available online at http://www.fns.usda.gov/snap/rules/Memo/2013/FY_2014_COLA_memo.pdf. *See*, in accord, state policy at *BEPS/DFS Operations Memo*, #13-27, September 9, 2013.

The petitioner does not contest that the state agency has correctly calculated his gross income and permissible FS income deductions for November. The Secretary's action is controlling, and there is no legal authority for deviating from Secretary's decision setting the new allotment maximums.

CONCLUSIONS OF LAW

1. The state agency correctly reduced the maximum FS allotments per household size, per a directive from the Secretary of the federal Department of Agriculture, effective November 1, 2013.
2. The state agency correctly determined the petitioner's FS allotments for September and November 2013.

THEREFORE, it is

ORDERED

That the petition 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, 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 27th day of December, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, 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 December 27, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability