



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/154444

PRELIMINARY RECITALS

Pursuant to a petition filed December 30, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Jefferson County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 4, 2014, at Jefferson, Wisconsin.

The issue for determination is whether the county agency correctly sought to discontinue the petitioner's FS effective January 1, 2014, due to increased income.

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: Jill Johnson, ES mgr.

Jefferson County Department of Human Services
Workforce Development Center
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Jefferson County.
2. The petitioner had an ongoing FS case prior to January 2013, as a household of three persons. His case transferred from Ashland County in December 2013, which prompted a verification

request regarding his changed employment, income, and shelter expenses. The verification was received. The wages shown (\$20 per hour, times 40 hours weekly) averaged \$1600.00 bi-weekly, which is then multiplied by 2.15 weeks per month (per FS regulation), to arrive at monthly gross income of \$3,440.00.

3. On December 17, 2013, the Department issued written notice to the petitioner advising that his FS would be discontinued effective January 1, 2014. The basis for reduction was increased earned income. Exhibit 2. The petitioner timely appealed, and aid was continued.
4. The petitioner has a rent/shelter expense of \$900, plus utility expenses that result in a utility standard deduction. He does not pay out child support, and does not incur a dependent care expense to go to work.
5. At hearing, the petitioner reported that his work hours were not consistently at the 40 hours per week level, which means that the \$3,440 income figure was too high. To verify this assertion, he submitted paystubs: November 14 for 70.17 hours totaling \$1,403.40 paid, November 27 for 80 hours totaling \$1,600.00 paid, December 12 for 80 hours totaling \$1,600.00 paid, December 26 for 59.5 hours totaling \$1,190.56 paid, January 9 for 76.00 hours totaling \$1,524.28 paid, and January 23 for 70.25 hours totaling \$1,408.60 paid. Some checks reflected slight add-ons for night differential pay. *See*, Exhibit 5, paystubs.

DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for January, 2014, onward. The gross income was based on an employer verification form, submitted on December 11, 2013. If the employer had given the petitioner the hours shown on the form, the Department's income calculation and resulting action would have been correct. The budgeting calculations here were performed prospectively. Prospective budgeting should reflect what the petitioner is likely to receive, on average, each month. *FS Wisconsin Handbook (FSWH)*, 4.1.1, viewable online at www.emhandbooks.wisconsin.gov/fsh/. For earned income that is received biweekly, the agency is directed to develop a biweekly average, and then multiply that figure by 2.15 to account for three-paycheck months. For weekly income, the multiplier is 4.3. 7 C.F.R. §273.10(c)(2).

The petitioner asserted that he did not actually end up working 40 hours every week, and he produced his paystubs to prove this, by a preponderance of the credible evidence. The paystub amounts average out to \$1,454.47 bi-weekly. When this figure is multiplied by 2.15, the result is \$3,127.11 in gross monthly income.

In calculating the petitioner's January allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county start with gross, rather than net, income, and allow only a limited number of identified deductions from that income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a case with one to three persons is currently set at \$152, per *FS Wisconsin Handbook*, 8.1.3. Twenty percent of any earned income is then subtracted as the Earned Income Deduction; that deduction was correctly given here. A Dependent Care Deduction is also taken if the couple incurred day care expenses in order to go to work, an Excess Medical Expense Deduction is subtracted for an elderly or disabled person's allowable medical expenses that exceed \$35 per month, and child support paid out garners a deduction. There is no record of the latter three expenses here. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of that income. 7 C.F.R. §273.9(d)(6)(ii). Based on a \$900 shelter cost plus the \$450 heating utility standard, the petitioner's shelter costs totaled \$1,350. This did exceed half of the adjusted income (\$1,174.85), so an excess shelter cost of \$175.15 was deducted in the allotment calculation.

Thus, the January 2014 allotment calculation correctly looked like this:

Gross income	3127.11
Minus Earned Inc. Deduction	- 625.42
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-152.00</u>
Adjusted Income	2349.69
Minus Shelter Deduction	<u>-175.15</u> (\$478 is the maximum)
Net Income	2174.54

The correct allotment for three persons with net income of \$2,174.54 was *zero* in January 2014. *FS Wisconsin Handbook*, 8.1.2, p.15.

The petitioner indicated that his income will likely drop sharply in April 1, 2014. If that happens, he should reapply for FS at that time.

CONCLUSIONS OF LAW

1. The Department correctly determined the petitioner’s FS allotment for January, 2014, onward.

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 25th day of February, 2014

\sNancy J. Gagnon
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 February 25, 2014.

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