



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/154496

PRELIMINARY RECITALS

Pursuant to a petition filed December 28, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 11, 2014, at Sheboygan, Wisconsin. The record was held open post-hearing to allow the Petitioner to submit additional information. The Petitioner submitted additional information on February 19, 2014. The record was closed on February 19, 2014.

The issue for determination is whether the agency properly denied the Petitioner's FS benefits for January 1, 2014.

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: Kris Schmidt

Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.

2. Petitioner’s Six Month Report Form (SMRF) was processed by the agency on December 10, 2013. The agency verified that the Petitioner works for [REDACTED] but he is paid in cash so he is considered to be self-employed.
3. On December 13, 2013, Petitioner submitted Self-Employment Income Report forms (SEIRFs) for June – November, 2013. Petitioner reported the following:

	Gross income	Total Expenses	Net Income
June, 2013	\$1,700	\$1,370	\$ 330
July, 2013	\$1,500	\$1,390	\$ 110
August, 2013	\$2,300	\$1,420	\$ 880
Sept, 2013	\$1,846	\$1,420	\$ 426
October, 2013	\$3,570	\$1,465	\$2,105
Nov, 2013	\$2,270	\$1,360	\$ 910

Petitioner’s expenses included \$700/month for rent on his residence.

4. Petitioner’s wife is self-employed. Her gross income for June – November, 2013 was \$900. She reported expenses of \$800 and net income of \$100.
5. Petitioner received five unemployment compensation benefit checks in the amount of \$349 (a total of \$1,745) in December, 2013. He received no unemployment compensation after December, 2013.
6. Petitioner’s household size is 4. His monthly shelter expense is \$700.
7. Petitioner’s employment with [REDACTED] ended on or about November 22, 2013. Petitioner submitted a SEIRF reporting no earned income for December, 2013.
8. On December 17, 2013, the agency issued a Notice of Decision informing the Petitioner that his FS benefits would end on January 1, 2014 because household income exceeded the program limit.
9. On December 28, 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 a recipient’s nonexempt income, including earned and unearned income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which is \$163 per month for a four-person household. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin Handbook (FSH) § 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); FSH § 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); FSH § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH § 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); FSH § 4.6.7.

The agency must average self-employment income that represents a food unit’s yearly income over a 12 month period, even if the income is received within only a short period of time during those 12 months. FSH § 4.3.3.5. Self-employment income that is intended to meet the food unit’s needs for only part of the year is to be averaged over the period of time the income is intended to cover. FSH § 4.3.5.1.

In this case, the Petitioner submitted additional information regarding his income in December, 2013. He reported \$0 earned income and he received UC benefits of \$1,745 for the month of December. Those

benefits did not continue into January, 2013 or beyond. Based on the information known to the agency at the time, it budgeted earned income based on the June – November, 2013 SEIRFs and unearned income of \$349/week in determining benefits effective January 1, 2014. The agency budgets prospectively so it budgeted properly based on the information it had at the time. December, 2013 was an unusual month for the Petitioner. He had no earned income and received unearned income just for that month. Therefore, the agency's budgeting for January, 2014 does not reflect the usual circumstances for the Petitioner's household.

Based on the evidence, I am remanding the matter to the agency to re-determine Petitioner's benefits effective January 1, 2014 based on an average of the Petitioner's earned income as reported on the SEIRFs submitted for June – December, 2013 and Petitioner's average unearned income during that period.

CONCLUSIONS OF LAW

The agency must re-determine the Petitioner's FS benefits effective January 1, 2014 based on an average of the Petitioner's earned and unearned income for the period of June – December, 2013.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to re-determine the Petitioner's monthly average income based on the SEIRFs submitted for June – December, 2013 and unearned income received during that time. The agency shall issue a new Notice of Decision to the Petitioner regarding its determination. If the Petitioner disagrees with the agency's new determination, he shall have the right to a new appeal of the matter. The agency's actions shall be completed within 10 days of the date of this decision.

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 Milwaukee,
Wisconsin, this 26th day of February, 2014

\sDebra Bursinger
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 February 26, 2014.

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