



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/154760

PRELIMINARY RECITALS

Pursuant to a petition filed January 9, 2014, 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 February 12, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly reduced the petitioner's FS benefit to \$41 effective February 1, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Yia Xiong, IM Spec. 2
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The petitioner had an ongoing FS case in 2013, as a household of two persons (self and child). On December 30, 2012, she reported employment with [redacted]. She testified that she also

reported this employment on June 24, 2013, but that the Department did not act on the change report.

3. Upon receiving the December 30 report, the Department requested income verification. Verification was timely provided. The Department observed that the petitioner was working 80 hours biweekly for regular pay of \$11.00 and then \$12.25 hourly, and counted overtime that appeared on her December paystubs.
4. The Department reviewed her case further, and determined that it had erred in including the overtime pay, going forward. Therefore, the Department then calculated her earnings at \$12.25 hourly (late December) and an early December \$11.00 hourly, times 80 hours biweekly, times 2.15 average pay periods per month (per FS regulation), to arrive at monthly gross income of \$2,060.
5. On January 13, 2014, the Department issued written notice to the petitioner advising that her FS would be reduced from \$244 to \$41 effective February 1, 2014. The basis for reduction was increased earned income. The petitioner timely appealed.
6. The petitioner has a rent/shelter expense of \$810, plus utility expenses. She does not pay out child support, and did not report that she incurs an out-of-pocket dependent care expense to go to work.
7. The petitioner was promoted in December, which accounts for her increased hourly wage. In months after February 2014, the agency is likely to calculate a higher income for the petitioner:  $\$12.25 \text{ per hour} \times 80 \text{ hours} = \$980.00 \times 2.15 = \$2,107$ .

### DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for February, 2014. The gross income was based on the paystubs from December, submitted by the petitioner. There is no dispute as to the amounts that were shown on the December paystubs, or the agency's arithmetic in averaging the December paystubs. 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/](http://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).

In calculating the petitioner's February 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 petitioner incurred out-of-pocket 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 \$810 shelter cost plus the \$450 heating utility standard, the petitioner's shelter costs totaled \$1,260. This exceeded half of the adjusted income (\$748), so a \$478 excess shelter cost was deducted in the allotment calculation.

Thus, the February 2014 allotment calculation looked like this:

Gross income	2060.06
Minus Earned Inc. Deduction	- 412.01
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-152.00</u>
Adjusted Income	1496.05
Minus Shelter Deduction	<u>-478.00</u>
Net Income	1018.05

The correct allotment for two persons with net income of \$1,018 was \$41 in February 2014. *FS Wisconsin Handbook*, 8.1.2, p.15.

The petitioner was under the impression that the agency had overcounted her earnings by including overtime (which she was no longer receiving following her promotion) for the February allotment calculation. However, the agency clarified that it was not counting overtime in the February calculation.

**CONCLUSIONS OF LAW**

1. The Department correctly reduced the petitioner’s FS allotment for February, 2014.

**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 4th day of March, 2014

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\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 March 4, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability