



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/155045

PRELIMINARY RECITALS

Pursuant to a petition filed January 27, 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 25, 2014, by telephone. A hearing set for February 19, 2014 was rescheduled at petitioner's request. The record was held open to allow petitioner to submit paystubs; said information was timely received..

The issue for determination is whether the county correctly determined petitioner's household income.

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: Pang Thao Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 5, 2013, based on earnings information provided by petitioner, the respondent prepared a budget identifying gross monthly earned income of \$1,476.49. Deductions applied

included an earned income deduction (\$295.29), standard deduction (152.00), excess medical expenses (69.90) and a shelter deduction (\$570.35). The respondent thereby determined that petitioner's FS allotment was \$72.00. Exhibit 13.

3. On January 7, 2014, based on earnings information provided by petitioner, the respondent prepared a new budget identifying gross monthly earned income of \$1,582.53. Deductions applied included an earned income deduction (\$316.50), standard deduction (152.00), and a shelter deduction (\$492.99). The respondent thereby determined that petitioner's FS allotment was \$15.00 Exhibit 13.
4. On January 13, 2014, the agency issued a notice of decision notifying the Petitioner that his FS benefits would be reduced from \$72/month to \$15/month effective February 1, 2014. Exhibit 5.
5. Petitioner is a kidney dialysis patient, and as such his work hours fluctuate.
6. On January 27, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals contesting the respondent's income determination.

DISCUSSION

As a general rule, applicants for FoodShare (FS) benefits are eligible to receive benefits provided they meet financial eligibility requirements. FS Wisconsin Handbook (FSH), §1.1.3. A threshold financial eligibility requirement is the gross income test. The gross income limit for most households is 200% of the Federal Poverty Level (FPL). *Id.*, 4.2.1.1. Income must be converted to a monthly amount. 7 Code of Federal Regulations, §273.10(c)2(i).

Earned income is counted for the purpose of determining FS eligibility and allotments levels. FS Wisconsin Handbook, §4.3.2. Unearned income is also counted. *Id.*, §4.3.4.1. A standard deduction of \$152.00 is applied to all household income for a household of 1 to 3 people. *Id.*, §4.6.2. The earned income deduction is 20%. *Id.*, §4.6.3. These two items are deducted from gross income to arrive at adjusted household income. Shelter and utility expenses in excess of 50% of that adjusted household income is deducted. *Id.*, §4.6.7. Also see 7 CFR 273.10 generally regarding budgeting calculations. Finally, the allotment applicable to a household is then reduced by 30% of the household's net income. 7 CFR 273.10(e)(2)(ii)(A).

The agency may use income received during the last 30 days as an indicator of the income that is and will be available to the household during the certification period, unless that income does not accurately reflect changes in income that have occurred or are anticipated to occur. The agency may also use statements from employers or an employment verification form to verify prospective income. FSH § 1.2.4.2.

If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. FSH §1.2.4.2.

In this case, the petitioner testified that his medical condition results in fluctuating household income. He provided pay stubs for pay periods ending December 28, 2013, January 11, 2014, January 25, 2014 and February 8, 2014. Exhibit 15. Gross pay was indicated as \$1,111.52, 694.05, 476.92, and 833.03, respectively. *Id.* Due to the substantiated fluctuations, I agree with petitioner that a longer period of time must be reviewed in order to establish petitioner's correct FS allotment.

Based on the evidence, the agency did not properly determine the Petitioner's monthly FS benefits.

CONCLUSIONS OF LAW

The agency did not properly budget the Petitioner's monthly income and property tax expense when it determined that his monthly FS benefits would decrease effective February 1, 2014.

THEREFORE, it is

ORDERED

That this matter be remanded to the agency to re-determine the Petitioner's FS benefits effective February 1, 2014 based on his average earned and unearned income over at least a 3 month period prior to the renewal date. The agency shall issue a new Notice of Decision to the Petitioner for FS benefits effective February 1, 2014. All of these actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of April, 2014

\sPeter McCombs
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 April 3, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability