



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/156429

PRELIMINARY RECITALS

Pursuant to a petition filed March 28, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Fond du Lac County Dept. of Social Services to reduce FoodShare benefits (FS), a hearing was held on April 17, 2014, by telephone.

The issue for determination is whether petitioner's income is lower than budgeted.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Deb Bohlman
Fond du Lac County Dept. of Social Services
87 Vincent Street
Fond du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond du Lac County.
2. Petitioner receives FS for himself, his wife, and two children. They had an FS renewal due by the end of March, 2014. At the renewal petitioner was asked for his two most recent paystubs from the [REDACTED], where he works as a substitute teacher. The two most recent stubs showed total income of \$1,573.26, which averaged out for a full month to \$1,691.25.
3. Based on that income plus other household income, the county determined that the household was eligible for \$286 in FS effective April 1, 2014, a reduction from \$400 in March.

4. The county informed petitioner about the change by a notice dated March 21, 2014.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$163 per month. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 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); FS Handbook, App. 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); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 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); FS Handbook, App. 4.6.7.

Petitioner questioned why his income could not be averaged out for twelve months because he works only during the school year. The Handbook, App. 4.3.2, no. 13, provides that income can be averaged for an entire year only if it is contractual, such as a school teacher contract for an entire year but paid out in nine months. Petitioner's income is not contractual, and thus it must be budgeted for FS in the months actually received.

Petitioner also pointed out that his mortgage expense as listed was too low, but Ms. Bohlman explained that only a percentage of his mortgage can be used because 11% of the mortgage is deducted for business use of the home. That 11% cannot be used for the shelter deduction. See Handbook, App. 4.6.7.2.

The main question for me is the budgeting of only the two most recent paystubs. While the Handbook, at App. 1.2.4.2, provides that in general the agency should utilize the income from the last thirty days, there are situations where the last thirty days is not best indicator of income. If income fluctuates a longer period can be used. Id.

Because petitioner discussed his fluctuating income, I asked him to send me his most recent paystub. His April 18, 2014 stub, which will be his final check that month, showed a year-to-date gross income of \$5,785.51. That amount divided by four equals \$1,446.38. I conclude that amount to be the better estimate of petitioner's monthly earned income from the school district. The two paystubs used by the county were for periods when school was in session regularly. The year-to-date takes into account vacation days built into the schedule as well as days that petitioner does not work due to unavailability of jobs. I thus will order the county to re-determine FS using the lower monthly income.

CONCLUSIONS OF LAW

Petitioner's monthly earned income was overestimated; it should be estimated using a longer period of time because it fluctuates.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to re-determine petitioner's household for April and continuing using \$1,446.38 as his monthly earned income. The county shall take the action, and issue supplemental FS, within 10 days of this decision. The income shall be used until petitioner reports a change that requires a re-determination.

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 22nd day of April, 2014

\sBrian C. Schneider
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 22, 2014.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability