



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/158099

PRELIMINARY RECITALS

Pursuant to a petition filed April 20, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Milwaukee Enrollment Services to reduce FoodShare benefits (FS), a hearing was held on June 12, 2014, by telephone.

The issue for determination is whether the agency correctly determined petitioner's FS beginning April, 2014.

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 Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In March, 2014, petitioner received FS for himself and his son. On March 14 the agency notified petitioner that FS would be reduced to \$15 effective April 1, 2014. On March 19 petitioner reported that his son no longer was in the household.
3. Petitioner filed an appeal on April 2, 2014. The agency did not act on it until petitioner complained in early June. The appeal was found and processed, leading to this hearing.

4. The agency removed petitioner's son from the case effective May 1, 2014. Petitioner's FS were increased to \$28 for May based upon his social security income of \$788 per month and his earned income of \$556.20 per month.
5. On April 9, 2014 the agency requested verification of petitioner's earned income due to a discrepancy between the budgeted amount and the quarterly amounts shown on a state wage match. No verification was received and by a notice dated April 29 the agency informed petitioner that the FS were scheduled to close June 1 for failure to verify.
6. On May 13 petitioner reported that he no longer was working. The agency requested verification. On the date of the hearing petitioner verified that his last work day was April 19 and last pay check was April 29, 2014.
7. Petitioner pays \$600 per month rent and utilities. The record shows that he pays \$60 per month in medical co-pays.
8. Benefits were ordered continued pending the appeal. On June 4 the agency issued petitioner \$548 in FS to bring him up to \$197 per month for April, May, and June, 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 \$152 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. The maximum shelter deduction is \$459 unless the household includes an elderly or disabled individual; in those cases there is no shelter cap. Handbook, App. 8.1.3. and 4.6.7.1.

Obviously much occurred in petitioner's case. He testified at the hearing that he reported that his son was out of the household in December, and that his son's income ceased in 2013. Those reports do not show in case notes, but are irrelevant to the issue of April, 2014 FS and beyond.

The \$15 FS for April was incorrect. When petitioner reported his son out of the household on March 19, the FS should have been redetermined. The correct allotment should have been the same \$28 issued for May. May's FS were based upon petitioner's social security and earned income for a one-person household. He received a \$25 excess medical expense deduction and a \$522 shelter deduction to bring net income down to \$533.94. A one-person household with that net income is entitled to \$28 in FS. Handbook, App. 8.1.2.

May's FS were correct even though petitioner's earned income ended in April. If a person reports a change that will result in increased FS, the general rule is that the increase will take place in the month after the change is reported. 7 C.F.R. §273.12(c)(1). The FS Handbook, Appendix. 6.1.3.3, requires:

All reported changes that cause an increase in the FS benefit including person additions, increases in expenses, etc., will be effective the first of the month following the report month if required verifications are received within 10 days of the request for verification.

The FS rules require changes to be made in the month after the change is reported, not the month that the change occurs. Thus FS for May were correctly determined to be \$28, with no change to be made until June because petitioner reported the end of the job on May 13.

June FS were not issued initially because there was no verification of petitioner's earned income after the April 9 request or after petitioner's reported the job ending. We now know that the employer did not cooperate with the request, and petitioner finally obtained verification by telephone during the hearing. With no earned income, petitioner would have received \$189 in FS for June based upon the following calculation: \$788 earned income minus \$152 standard deduction minus \$25 excess medical expense equals \$611. The shelter deduction would be \$1,050 minus \$305.50 (one-half of \$611) equals \$744. That leaves negative income, which is zeroed out. A person with zero net income is entitled to \$189 in FS, and petitioner already has received \$197 in the continued benefits order.

I will remand the case to the agency to determine FS for July, which likely will be the same \$189. I note, however, that due to the continued benefits order petitioner was overpaid for April through June.

CONCLUSIONS OF LAW

1. Petitioner was entitled to \$28 FS for April and May, 2014 based upon his earned and unearned income for a one-person household.
2. Petitioner was entitled to the maximum one-person allotment of \$189 for June, 2014.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to determine petitioner's July, 2014 FS based only upon his social security income and acknowledging that the end of his employment has been verified. The agency shall take the action within 10 days 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 16th day of June, 2014

\sBrian C. Schneider
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 June 16, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability