



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159294

PRELIMINARY RECITALS

Pursuant to a petition filed July 23, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Milwaukee Enrollment Services to discontinue FoodShare benefits (FS), a hearing was held on August 19, 2014, by telephone.

The issue for determination is whether the agency correctly determined petitioner's income during the summer months.

PARTIES IN INTEREST:

Petitioner:



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. Petitioner receives FS for herself and one child. She is employed by the [redacted] on a 9.5 month contract. She has a second job with [redacted] in [redacted]. Although she is employed there year-round, she increases her hours during the summer.
3. After a review the agency determined that petitioner's yearly school income should be divided by 9.5 to determine monthly income. It took petitioner's anticipated income from [redacted], and

for August, 2014 benefits it added both incomes. By a notice dated July 10, 2014, the agency informed petitioner that FS would end August 1 because her income is over the limit. Benefits were continued pending this decision.

DISCUSSION

FS allotments are based upon a household's prospective income, meaning that the agency must estimate the household's income for the month in which FS are to be received. FS Handbook, Appendix 4.1.1. Income from the past 30 days typically is used to make the estimate, but if income fluctuates, the worker must determine a monthly average using prior months' income. 7 C.F.R. §273.10(c)(1) and (2); Handbook, App. 1.2.4.2.

There are special rules for budgeting income of people who work on a contractual basis such as school employees: "Contractual income that is the food unit's annual income (intended to provide support for the entire year), and is not paid on an hourly or piece work basis, should be prorated over 12 months." Handbook, App. 4.3.2.1, no. 13. However, the Handbook includes a proviso that if the person actually uses the 12-month income over the 9½ month school year, and supplements the income with another job in summer, then the school income should be divided by 9½.

The problem in this case is that the agency divided the school income by 9½, but then continued to budget it for August, resulting in both incomes being counted, and thus putting petitioner over the income limit. I conclude that it was correct to divide the annual school income by 9½, but that the school income should not have been budgeted during July and August. It should start being budgeted again in September, and concurrently for September petitioner's second income should be reduced.

I note that petitioner's situation does not fit the example precisely. She actually works the second job year-round, but at substantially reduced hours during the school year. She also begins working for the school in August and receives income from it. However, the income she receives in August already is counted in the 9½ month averaging, so it would make no sense to count it again for August.

CONCLUSIONS OF LAW

Although the agency correctly divided petitioner's school income by 9½ to determine monthly income, it erred by counting the school income for August.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to re-determine petitioner's August, 2014 FS by removing her income from [REDACTED] [REDACTED] [REDACTED] from the calculations, and then to issue petitioner appropriate supplemental FS for the month. The school income should be added back for September. 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 22nd day of August, 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 August 22, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability