



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159749

PRELIMINARY RECITALS

Pursuant to a petition filed August 07, 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 September 02, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner was eligible for transitional FoodShare during May 2014.

There appeared at that time and place 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: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was an ongoing recipient of FoodShare in the beginning of 2014. On April 16, 2014, petitioner reported employment and earned income to the agency. Petitioner's new job was 40 hours per week at \$21.63 per hour. Petitioner's gross income was budgeted at \$3,720.36 for a

household of two persons. Petitioner's start date at her new job was April 28, 2014. Petitioner was paid on May 9 and May 23, 2014.

3. Petitioner received her final W-2 benefit payment on May 27, 2014.
4. The agency determined that petitioner's new income made her ineligible for FS.
5. The agency sent notice on April 18, 2014 indicating termination of FS effective May 1, 2014.
6. Petitioner filed an appeal.

DISCUSSION

Transitional FS is available to a household that meets the relevant criteria "as long as the member was part of an active FS case in the benefit month the last W-2...payment was issued." See *FoodShare Wisconsin Handbook* at § 5.1.1.1. The agency argues that the new earned income reported on April 16, 2014 for the job that began on April 28, 2014 placed the household out of eligibility for FS altogether. The agency then argues that because there was no active FS eligibility there could not be TFS eligibility per this Handbook section.

Petitioner argues that she should have remained an eligible FS household for the month of May despite the new earned income. Petitioner points to FSWH § 5.1.1.2 to support her claim that her April income (before she started the job) should have been used to determine her May eligibility for TFS. But, this argument fails. The section of the Handbook the petitioner relies upon deals with the calculation of the benefit amount that would be paid only if the person is first determined eligible for TFS. The section is not addressing an eligibility determination. It remains that a person must be part of an active FS case in the month of the final W-2 payment which was May.

Petitioner also argues that her May income would not matter as the *Handbook* specifically states that changes do not need to be reported. See *FSWH* § 5.1.1.3. But, this only applies once a person becomes eligible and certified for TFS. Petitioner never was found eligible for TFS and the benefit calculation rules are not applicable.

Thus, the critical question is whether the agency erred in terminating FS effective May 1, 2014. Petitioner argues that May eligibility should have been based on April income and not prospective May income. This is incorrect. FS eligibility is based on prospective budgeting. See *FSWH* 4.1.1. But, the agency must also budget only the income that is actually available to the group. Petitioner argues that she did not receive the entire \$3,720.36 that was budgeted for the month of May. She explains that she only started her job on April 28, 2014 and was not paid until later May. This assertion is not supported in the documents. Petitioner provided 3 paystubs. Checks were issued on May 9 and May 23, 2014. The gross amount of each check was \$1730.77. Petitioner actually received these wages in the month of May yet she still argues that she should have gotten hundreds of dollars in FoodShare. I see no support for this claim and petitioner's multiple arguments are meritless.

CONCLUSIONS OF LAW

The agency did not err in terminating FS effective May 1, 2014 as petitioner's earned income made her ineligible for FS benefits in this month. She was therefore not eligible for TFS either.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

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 30th day of September, 2014

\sJohn P. Tedesco
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 September 30, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability