



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159959
FOO/159960

PRELIMINARY RECITALS

Pursuant to a petition filed August 15, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on September 25, 2014, at West Bend, Wisconsin.

NOTE: The Division of Hearings and Appeals opened two appeals for the Petitioner concerning her foodshare benefits. It is unclear why two files were opened for the Petitioner, since she is only appealing a notice of decision dated August 14, 2014. With Petitioner's permission, the two files have been consolidated in this decision.

The issues for determination are whether the Washington County Department of Social Services (the agency) correctly calculated the Petitioner's FoodShare allotment and whether it correctly prorated the Petitioner's benefits.

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: Julie Williamson, Economic Support Specialist
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. On July 14, 2014, the Petitioner went to the agency to submit her six month report form and she submitted her paystubs. (Exhibit 3; Testimony of Petitioner)
3. Check 33730 shows gross bi-weekly income of \$495.11. Check 33812 shows gross bi-weekly income of 391.06. (Exhibit 3) Petitioner's estimated monthly income works out to be as follows:

$$\$495.11 + 391.06 = \$886.17$$

$$\$886.17 \div 2 = \$443.09 \text{ average bi-weekly income}$$

$$443.09 \times 2.15 \text{ average bi-weekly pay periods per month} = \$952.64$$
4. On July 18, 2014, the agency sent the Petitioner a notice indicating that her FoodShare benefits would be ending August 1, 2014, because the six month report form was not received or was not complete. The notice further instructed the Petitioner to contact the agency before the end of the month, or her benefits would end. (Exhibit 4)
5. On August 13, 2014, the Petitioner contacted the agency because she went to the grocery store and discovered that she had not received her monthly FoodShare allotment. (Testimony of Petitioner; Exhibit 3)
6. The agency conducted a FoodShare intake on August 13, 2014 and reopened the Petitioner's FoodShare case. (Exhibit 3)
7. On August 14, 2014, the agency sent the Petitioner a notice indicating that for August she would receive \$125.00 in FoodShare benefits and that September 2014 forward she would receive \$205.00 per month. (Exhibit 5)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 15, 2014. (Exhibit 10)
9. Petitioner's household consists of two people. (Testimony of Petitioner)
10. No one in the household is elderly, blind or disabled. (Testimony of Petitioner)
11. The Petitioner pays \$700.00 in rent; heat is not included. (Testimony of Petitioner)
12. There is a court order stating that the Petitioner is to receive about \$500 per month in child support, though she has not been receiving that full amount. (Testimony of Petitioner)
13. The agency estimated the Petitioner's unearned income from child support to be \$341.33 per month, based upon information it received from the KIDS data base that she received \$512 in May, nothing in June and \$512 in July. (Testimony of Ms. Williamson)

DISCUSSION

The agency has not shown that it correctly calculated the Petitioner's FoodShare allotment.

The agency must budget all income of the FS household, including all earned and unearned income. 7 CFR § 273.9(b); *FoodShare Wisconsin Handbook (FSH)*, § 4.3.1. The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH*, §4.1.1.

Looking at the FoodShare budget for August 2014, the agency calculated Petitioner's earned income to be \$950.64. It is unclear how the agency came to that calculation. As discussed in Finding of Fact #3,

Petitioner's earned income worked out to be slightly higher, \$952.64 based upon her paystubs. As such, the agency could not have calculated the Petitioner's FoodShare benefits correctly.

It should be noted that the Petitioner disagreed with the manner in which the agency counted her child support income, because she receives child support payments inconsistently, even though there is a court order for approximately \$500 per month.

4.3.4.1 Unearned Income Introduction

7 CFR § 273.9(b)(2)

Unearned income is income not gained by work or delivery of a service or product. Count all unearned income unless it must be disregarded. Some unearned income is disregarded because of source, type, or the reason for receiving it.

Count unearned income as income in the month that it is received, except when:

1. It isn't available to the FS group.
2. You're told otherwise by specific instructions in this Handbook.
3. When two payments from the same income source are received the same month due to mailing cycle adjustments, count each payment only for the month it is intended. Income sources commonly affected by such mailing cycle fluctuations include general assistance, other public assistance programs, SSI and SSA benefits.

According to the testimony of Ms. Williamson, the agency takes a three month average to determine child support income.

I have not found any specific provisions in the FoodShare Wisconsin Handbook that explicitly discusses how to calculate child support income that is received inconsistently. However, there are provisions that do discuss averaging income / payments, when there are wide fluctuations.

Section 4.3.4.2 give directions to average annually paid annuities and lottery winnings over 12 months.

Section 4.6.5.1 gives directions to average payments, when calculating a child support deduction.

Section 1.2.4.2 addresses earned income and states that when earned 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. To average widely fluctuating income, use the household's anticipated income including fluctuations anticipated over the certification period..." *FSH §1.2.4.2*

Section 4.3.3.5 gives directions to "average self-employment income that represents a food unit's yearly income over a 12-month period, even if the income is received within only a short period of time during that 12 months."

Based upon the foregoing provisions, it is found that the agency was correct in averaging the child support income that the Petitioner received, but that it should have averaged the child support income over the 12-month certification period.

The agency will have to review both its earned income and unearned income determinations and recalculate the Petitioner's Foodshare allotment for August 2014 forward. If the Petitioner still disagrees with the new determination, she will have to file a NEW appeal.

Did the agency correctly pro-rate the Petitioner's benefits for August 2013?

"Food units certified for 12 months, and subject to reduced change reporting requirements, are required to submit a six-month report form (SMRF) in the sixth month of the certification period...To be considered timely, a SMRF must be returned to the local agency by the 5th day of the process month (month 6). If the [household] fails to return a timely SMRF, FS FoodShare will close the last day of the process month at adverse action." *FoodShare Wisconsin Handbook (FSH) §6.1.2*

A FoodShare case that closes prior to the end of the report month may reopen for month 7 without a new application, if requested verification is received prior to the end of month 7. *Id.* Benefits will be prorated from the date all SMRF requirements are met. *FSH §6.1.2*

The Petitioner offered credible testimony that she went to the agency on July 14, 2014 to drop off her paystubs and to take care of her SMRF and health care renewal. The case comments that are marked as Exhibit 2, do show that the Petitioner dropped off her paystubs as she claims and that she took care of the paperwork for her healthcare benefits. It doesn't make much sense for Petitioner go to the trouble of dropping off her paystubs, in person, and to address her healthcare renewal, in person, but not the SMRF.

Looking at the case comments, it is possible that there might have been some confusion/miscommunication between Petitioner and the agency, since it appears her BadgerCare renewal was, indeed, due the same time as her FoodShare SMRF. (Exhibit 2)

Because the Petitioner testified credibly that she timely submitted her SMRF and paystubs on July 14, 2014, her benefits should have continued effective August 1, 2014.

CONCLUSIONS OF LAW

- 1) The agency did not correctly calculate the Petitioner's FoodShare allotment for August 2014 forward.
- 2) The Petitioner should have received the full allotment for August 2014.

THEREFORE, it is

ORDERED

That the agency re-determine the Petitioner's income and FoodShare allotment for August 2014 forward, averaging child support payments received over the last 12 month certification period. The agency shall then issue to the Petitioner a new notice of decision. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of October, 2014.

\sMayumi M. Ishii
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 October 6, 2014.

Washington County Department of Social Services
Division of Health Care Access and Accountability