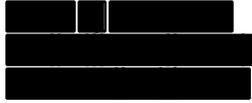




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/160281

PRELIMINARY RECITALS

Pursuant to a petition filed August 26, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Shawano County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 7, 2014, by telephone.

The issue for determination is whether the Department correctly discontinued the petitioner's FS effective September 1, 2014, due to excess income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Deb Marohl, ES Lead Worker
Shawano County Department of Social Services
607 E. Elizabeth Street
Shawano, WI 54166-3105

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Shawano County.
2. The petitioner has an ongoing FS case as a household of two persons. He reported updated earned income on August 7, 2014. Verification of his increased income (paystubs) was received

August 25, and showed pay of \$17.55 hourly, an average of 77.72 hours per bi-weekly pay period, and gross monthly income of \$2,932.60 (calculated per FS regulation).

3. On August 19, 2014, the Department issued written notice to the petitioner advising that his FS would be reduced to zero effective September 1, 2014. The basis for reduction was increased earned income. The petitioner timely appealed, and aid was continued pending appeal.
4. The petitioner has a shelter expense of \$429.67, plus utilities. He does pay out child support of \$600 monthly, and does not incur a dependent care expense to go to work.

DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for September 2014, onward. The gross income was based on submitted paystubs. There is no dispute as to the amounts that were shown on the paystubs, or the agency’s arithmetic in averaging those paystubs. The budgeting calculations here were performed prospectively. Prospective budgeting should reflect what the petitioner is likely to receive, on average, each month. *FS Wisconsin Handbook (FSWH)*, 4.1.1, viewable online at www.emhandbooks.wisconsin.gov/fsh/. For earned income that is received biweekly, the agency is directed to develop a biweekly average, and then multiply that figure by 2.15 to account for three-paycheck months. For weekly income, the multiplier is 4.3. 7 C.F.R. §273.10(c)(2).

In calculating the petitioner’s September allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department’s *FS Wisconsin Handbook*. The federal rule requires that the county start with gross, rather than net, income, and allow only a limited number of identified deductions from that income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a case with one to three persons is currently set at \$152, per *FS Wisconsin Handbook*, 8.1.3. Twenty percent of any earned income is then subtracted as the Earned Income Deduction; that deduction was correctly given here. A Dependent Care Deduction is also taken if the petitioner incurred day care expenses in order to go to work, an Excess Medical Expense Deduction is subtracted for an elderly or disabled person’s allowable medical expenses that exceed \$35 per month, and child support paid out garners a deduction. There is no record of the first two expenses here. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of that income. 7 C.F.R. §273.9(d)(6)(ii). Based on a \$430 shelter cost plus the \$450 heating utility standard, the petitioner’s shelter costs totaled \$880. This did exceed half of the adjusted income (\$797.04), so the excess shelter cost of \$82.96 was deducted in the allotment calculation.

Thus, the September 2014 allotment calculation correctly looked like this:

Gross income	2932.60
Minus Earned Inc. Deduction	- 586.52
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Child Supp. Paid	-600.00
Minus Standard Deduction	<u>-152.00</u>
Adjusted Income	1594.08
Minus Shelter Deduction	<u>- 82.96</u>
Net Income	1511.12

The correct allotment for two persons with net income of \$1,511.12 was zero in September 2014, because the net income limit was exceeded. *FS Wisconsin Handbook*, 8.1.1.

The petitioner expects to be laid off soon. If that happens, he should promptly re-apply for FS or report the change to the Department.

The petitioner also appealed discontinuance of his BadgerCare Plus. That concern will be addressed in a separate decision, as different rules apply.

CONCLUSIONS OF LAW

1. The Department correctly determined the petitioner’s FS allotment for September 2014.

THEREFORE, it is

ORDERED

That the petition 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 15th day of October, 2014

\sNancy J. Gagnon
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 15, 2014.

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