



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FOO/160787

PRELIMINARY RECITALS

Pursuant to a petition filed September 23, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Iowa County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on November 19, 2014, at Dodgeville, Wisconsin. A hearing set for October 15, 2014, was rescheduled at the petitioner's request.

The issue for determination is whether discontinuance of the petitioner's FS case effective July 1, 2014, due to excess income, was correct.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Petitioner's Representative:

Attorney Redact
31 South Mills Street
Madison, WI 53715

Respondent:

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

By: Nikki Biddick, ES Spec.
Iowa County Department of Social Services
303 W. Chapel Street, Suite 2300
Dodgeville, WI 53533

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Iowa County.

2. The petitioner has an ongoing FS case as a household of one person. She submitted a required Six Month Report Form (SMRF) over the internet to the Department on May 31, 2014. The online SMRF had pre-populated her prior, multiple employers – [Redact] (MP), [Redact] (IG), and [Redact] (RV). The petitioner did not see a pre-populated rate of pay or average hours worked online (there was an extra button she would have had to hit to see them), and that information was not on her printed screen copy of her SMRF. The petitioner also added a new employer, [Redact], with pay of \$10.00 hourly, at 8.0 hours weekly. *See*, Exhibit 1, SMRF. No wage verification was requested of the old employers, and the agency used its past verification of the rate of pay and hours worked at the old employers. The projected pay from the old employers plus the reported [Redact] pay, plus undisputed \$1,004 Social Security caused the petitioner's estimated income of \$2,037 to exceed the monthly income limit for a household of one person.
3. On June 5, 2014, the Department issued written notice to the petitioner advising that her FS would be discontinued effective July 1, 2014. The basis for discontinuance was increased earned income. Exhibit 2. The petitioner timely appealed.
4. There is no dispute that the petitioner has a shelter expense of \$645, plus utilities. She does not pay out child support, and does not incur a dependent care expense to go to work.
5. The petitioner's income from all of her employers is variable. From March through May 2014, her average monthly earnings were \$70 from MP (rather than the Department-budgeted \$334), \$40.25 from IG (rather than \$189), \$82.50 from RV (rather than \$60). For this three month period, the income from MP, IG, RV and [Redact] totaled \$368.83.

DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for July 2014, onward. 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).

The agency used historical gross income information, because the petitioner did not alert the agency to the variable nature of her income. Verification of income was not requested in connection with the SMRF (the agency was not required to do so), so this case is not about a failure to supply requested verification. If the agency had sent out a verification request letter, and if the petitioner had not responded, I would have upheld closure of her case for failure to supply requested verification. 7 C.F.R. §273.2(g)(3); *FS Wisconsin Handbook (Handbook)*, §§1.2.4.1- 1.2.4.3, at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm> . However, that is not what happened here.

The petitioner seeks a restoration of benefits from July 2014 forward, based on her actual income. She has supplied verification of the actual income, and her hearing request is timely to reach back to July 1, 2014. Accordingly, I will direct the agency to re-determine her FS eligibility from July 2014 forward, using the \$368.83 earned income figure, and to make the appropriate benefit restoration.

CONCLUSIONS OF LAW

1. The agency shall re-determine the petitioner's FS eligibility and benefit level from July 2014 forward, using total earned income of \$368.83 monthly.

THEREFORE, it is

ORDERED

That the petition is remanded to the agency with instructions to redetermine the petitioner's FS eligibility and allotments in accord with the Conclusion of Law above. This action shall be taken within 10 days of the date 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 December, 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 December 23, 2014.

Iowa County Department of Social Services
Division of Health Care Access and Accountability
Attorney Redact