



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/161000

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 1, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Dane County Dept. of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 22, 2014, by telephone.

The issue for determination is whether an FS increase can be backdated based upon corrected information.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Christine Chapman  
Dane County Dept. of Human Services  
1819 Aberg Avenue  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner has been receiving FS for a four-person household. Prior to November 1, 2013, she was credited with a \$645 monthly child care payment in the FS calculations. Her case closed briefly, and when it was reopened in November FS were reduced to \$259 primarily because the child care credit was reduced to \$129 per month. The county notified petitioner of the change by a notice dated November 20, 2013. Petitioner did not appeal the reduction.

3. In May, 2014, FS decreased from \$254 to \$114 because of an increase in earned income following a review. The child care amount remained \$129 per month because petitioner reported no changes other than the income. The county informed petitioner about the reduction in a notice dated April 18, 2014. Petitioner did not appeal the reduction.
4. In October, 2014, after another review FS increased again, largely because the monthly child care amount was increased to \$344.

### **DISCUSSION**

Petitioner filed this appeal seeking supplemental FS for the past months because the monthly child support obligation that was listed was too low. Petitioner testified that she paid \$125 per week until the start of the school year in September, 2014. During the hearing it was thought that an error might have occurred in the spring, 2014 at the review because FS decreased to \$114 in May, 2014. I said at the hearing that I would research what happened; when I did so I discovered that the change in the child care amount occurred when petitioner's FS were reopened in November, 2013.

At this point I have no mechanism to recalculate FS for the past months. Once timely and adequate notice is given to the household of an agency action regarding FS, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b). In this case the reduction of the child care amount occurred in November, 2013, and petitioner did not appeal. It is not clear, in fact, that the amount was incorrect then. When petitioner had her review in the spring, she reported no changes other than the income increase. Again, when the notice went out after that review, petitioner did not appeal within 90 days.

When the case was reviewed again in September, petitioner reported paying \$344 per month in child care. The report triggers the following rule found in the FS Handbook, Appendix. 6.1.3.3:

All reported changes that cause an increase in the FS benefit including person additions, increases in expenses, etc., will be effective the first of the month following the report month if required verifications are received within 10 days of the request for verification.

The policy is based on federal law found at 7 C.F.R. §273.12(c)(1). Because petitioner did not appeal the earlier notices as being incorrect, the increase in FS cannot occur until the month after she reported the correct amount. I conclude that I cannot order a retroactive increase in FS under these circumstances.

### **CONCLUSIONS OF LAW**

Petitioner's FS cannot be increased retroactively because petitioner did not report a higher child care expense until her review in September, 2014, and the increase cannot occur until after the report.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 24th day of October, 2014

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\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 October 24, 2014.

Dane County Department of Human Services  
Division of Health Care Access and Accountability