



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

FOO/161500

PRELIMINARY RECITALS

Pursuant to a petition filed October 27, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Lafayette County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 11, 2014, at Darlington, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

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

By: Redact

Lafayette County Department of Human Services
627 Main Street
Darlington, WI 53530

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Lafayette County.
2. Redact and Redact are spouses. They are in a household with 2 children.
3. The agency reduced petitioner's FS following a review in September 2014.
4. Petitioner appealed.

DISCUSSION

Petitioner's FS allotment was reduced following her periodic review effective October 1, 2014. She had been receiving \$595 and in October 2014 she received \$132. The agency stated that this was a result of the pay stubs she provided as part of the review.

At hearing, petitioner argued that her income should be averaged over the entire year and that the pay stubs provided to the agency represented a higher amount than she would typically receive. She explained that she earns more in July, August and September than during the other months of the year.

FS allotments are based upon a household's prospective income, meaning that the agency must estimate the household's income for the month in which FS are to be received. FS Handbook, Appendix 4.1.1. Income from the past 30 days typically is used to make the estimate, but if income fluctuates, the worker must determine a monthly average using prior months' income. 7 C.F.R. §273.10(c)(1) and (2); Handbook, App. 1.2.4.2.

There are special rules for budgeting income of people who work on a contractual basis such as school employees: "Contractual income that is the food unit's annual income (intended to provide support for the entire year), and is not paid on an hourly or piece work basis, should be prorated over 12 months." Handbook, App. 4.3.2.1, no. 13. But, that is not the case here. Petitioner merely says that she works more in the summer months.

I also note that petitioner states that she provided September's stubs and that the agency erred in using August's. But, petitioner was paid on 9/12 and 9/26. I am not certain when her review was completed or when the allotment was changed, but with an effective date of October 1 it was likely before she had both of the September stubs. It appears that with the review being completed in September that reliance on the August paystubs was appropriate. That said, it also appears that petitioner received three paychecks in August 2014. She was paid on the 1st, the 15th, and the 29th. I am unsure whether the agency counted all of this income as a monthly amount, or whether it took one check and multiples by 4.3, or averaged the three checks and did so. The agency did not explain the basis for the reduction with any specificity. It is also possible that petitioner is, during winter, entitled to more FS than she would have been granted in August or September. A copy of the FS budget screen would have been very helpful but none was submitted. The agency did not submit the notice indicating the reduction either. It therefore failed to meet its burden on this issue. The agency must recalculate the monthly allotment with reference to FS rules including FS Handbook 4.3.2 (see bold below):

4.3.2 Earned Income

4.3.2.1 Counted Earned Income

4.3.2.2 Disregarded Earned Income

Earned Income is gained from the performance of service, labor, or work. Earned income includes, but is not limited to salaries, wages, commission, tips, or payments for services. Count earned income only for the month in which it is received, except when the average number of payments increase due to mailing cycle adjustments.

Note: Occasionally, a regular periodic payment (e.g., wages, title II, or VA benefits) is received in a month other than the month of normal receipt. As long as there is no intent to interrupt the regular payment schedule, consider the funds to be income in the normal month of receipt.

Example 1: Bill works in February but does not receive his pay for those hours until March. Count those wages for March.

Households receiving income on a recurring monthly or semimonthly basis shall not have their monthly income varied merely because of changes in mailing cycles or because weekends or holidays cause additional payments to be received in a month.

Example 2: Jim receives his military pay on the 1st and 15th of each month. If Jim's payday for the following month is a holiday or falls on a weekend, he is paid on the last preceding work/week day. This may result in Jim receiving 3 paychecks in one month. In this situation, only 2 paychecks per month should be budgeted for Jim.

CONCLUSIONS OF LAW

The agency must recalculate the monthly FS allotments.

THEREFORE, it is ORDERED

That this matter is remanded to the agency with instructions to redetermine the petitioner's FS allotment based on recent income for October forward to the present based on the actual paystubs provided for this hearing and any other documentation to be appropriately sought and provided to the agency. Petitioner must cooperate with any Department requests for verification in accordance with this Order. The Department shall issue any appropriate supplements to petitioner. New notice shall be issued to petitioner indicating appropriate allotments for October forward with new appeal rights. These actions must be initiated within 10 days.

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 8th day of January, 2015

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 8, 2015.

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