



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/163068

PRELIMINARY RECITALS

Pursuant to a petition filed January 07, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 12, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly terminated the Petitioner’s FoodShare benefits effective January 1, 2015.

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: Simone Johnson, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On December 4, 2014, the Petitioner submitted the following four check stubs to the agency:

Date	Hours Worked	Rate of Pay	Premium	Sunday premium
11/07/2014	36.46 hours	\$12.35 / hr.	\$19.92	\$17.92
11/14/2014	37.91 hours	\$12.35 / hr.	\$19.94	\$15.52
11/21/2014	36.73 hours	\$12.35 / hr.	\$18.55	\$17.67
11/28/2014	37.04 hours	\$12.35 /hr.	\$21.88	\$17.74

(Exhibit 3, pgs. 13-16)

3. On December 9, 2014, the agency processed a Six-Month Report form for the Petitioner. (Exhibit 3, pg. 8)
4. On December 10, 2014, the agency sent the Petitioner a notice advising her that her FoodShare benefits would be ending, effective January 1, 2015, because her income is over the program limit. (Exhibit 3, pgs. 22-27)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 7, 2015. (Exhibit 1)
6. Petitioner’s assistance group currently consists of one person. Her husband is not included because he is not a U.S. Citizen, nor does he have qualified immigrant status. (Testimony of Petitioner and Ms. Johnson)
7. At the hearing, the Petitioner submitted the following four check stubs:

Date	Hours Worked	Rate of Pay	Premium	Sunday premium
01/23/2015	24.25 hours	\$12.35 / hr.	\$7.45	\$16.59
01/30/2015	34.72 hours	\$12.35 / hr.	\$11.75	\$16.23
02/06/2015	37.72 hours	\$12.35 / hr.	\$20.91	\$17.38
02/13/2015	37.10 hours	\$12.35 /hr.	\$13.76	\$16.59

(Exhibit 2)

DISCUSSION

To be categorically eligible, most FoodShare groups must have income at or below 200% of the Federal Poverty Level (FPL). *FSH §4.2.1.1; 7 CFR 273.2(j)(2)*. “If the household's gross income goes over 200% of FPL, the case will close.” *Id.* 200% of FPL for an assistance group of one is \$1946 per month. *FSH §8.1.1.1*

The agency must budget all income of the FoodShare household, including all earned and unearned income. *7 CFR § 273.9; FSH § 4.3.1, 4.3.2 and 4.3.4*. The allotment calculation is based on **prospectively** budgeted monthly income using estimated amounts. *FSH §4.1.1*.

Looking at the paychecks the Petitioner submitted in December 2014, we have the following income calculation:

Date	Hours Worked	Rate of Pay	Premium	Sunday premium
11/07/2014	36.46 hours	\$12.35 / hr.	\$19.92	\$17.92
11/14/2014	37.91 hours	\$12.35 / hr.	\$19.94	\$15.52
11/21/2014	36.73 hours	\$12.35 / hr.	\$18.55	\$17.67
11/28/2014	37.04 hours	\$12.35 /hr.	\$21.88	\$17.74

$36.46 + 37.91 + 36.73 + 37.04 = 148.14$ hours

148.14 total hours worked \div 4 paychecks = $\$37.035$ average hours worked per pay check

37.035 hours \times $\$12.35 = \457.38 average weekly regular income

$\$457.38 \times 4.3$ average weeks per month¹ = $\$1966.73$ average monthly regular income

$\$19.92 + \$19.94 + \$18.55 + \$21.88 = \$80.29$ total premiums earned

$\$80.29 \div 4$ paychecks = $\$20.07$ average premiums paid per paycheck

$\$20.07 \times 4.3$ average weeks per month = $\$86.30$ average monthly income from premiums

$\$17.92 + \$15.52 + \$17.67 + \$17.74 = \$68.85$ total Sunday premiums earned

$\$68.85 \div 4$ paychecks = $\$17.21$ average Sunday premium per paycheck

$\$17.21 \times 4.3$ average weeks per month = $\$74.00$ average monthly income from Sunday Premiums

$\$1966.73 + \$86.30 + \$74.00 = \2127.03 total monthly income.

Petitioner's household income of $\$2127.03$ is over the 200% FPL / $\$1946$ income limit. As such, the agency correctly ended the Petitioner's benefits, effective January 1, 2015.

At the February 12, 2015, hearing, the Petitioner asked that her income be reviewed, based upon more current paychecks:

Date	Hours Worked	Rate of Pay	Premium	Sunday premium
01/23/2015	24.25 hours	\$12.35 / hr.	\$7.45	\$16.59
01/30/2015	34.72 hours	\$12.35 / hr.	\$11.75	\$16.23
02/06/2015	37.72 hours	\$12.35 / hr.	\$20.91	\$17.38
02/13/2015	37.10 hours	\$12.35 /hr.	\$13.76	\$16.59

$24.25 + 34.72 + 37.72 + 37.10 = 133.79$ hours

133.79 total hours worked \div 4 paychecks = 33.45 average hours worked per pay check

33.45 hours \times $\$12.35 = \413.11 average weekly regular income

$\$413.11 \times 4.3$ average weeks per month = $\$1776.37$ average monthly regular income

$\$7.45 + \$11.75 + \$20.91 + \$13.76 = \$53.87$ total premiums earned

$\$53.87 \div 4$ paychecks = $\$13.47$ average premiums paid per paycheck

$\$13.47 \times 4.3$ average weeks per month = $\$57.92$ average monthly income from premiums

¹ See 7 C.F.R. 273.10(c)(2) and *Process Help Manual §16.4.1* – income must be prorated using 4.3 average weeks per month or 2.15 average bi-weekly pay periods per month.

\$16.59 + \$16.23 + \$17.38 + \$16.59 = \$66.79 total Sunday premiums earned
66.79 ÷ 4 paychecks = \$16.70 average Sunday premium per paycheck
\$16.70 x 4.3 average weeks per month = \$71.81 average monthly income from Sunday Premiums

\$1776.37 + \$57.92 + \$71.81 = \$1906.10 total monthly income.

Petitioner’s income of \$1906.10 is just under the 200% FPL / \$1946 income limit. As such, the Petitioner should submit a new application for benefits, as soon as possible.

CONCLUSIONS OF LAW

The agency correctly ended the Petitioner’s FoodShare benefits, effective January 1, 2015.

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 Milwaukee,
Wisconsin, this 23rd day of February, 2015.

\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 February 23, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability