



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/163924

PRELIMINARY RECITALS

Pursuant to a petition filed February 10, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 04, 2015, at Madison, Wisconsin.

The issue for determination is whether the respondent correctly determined petitioner's earned 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: Bridget Bell

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Dane County.
2. Petitioner receives FS as a household of one. Petitioner works for the [redacted] as a substitute support staff member; she is paid \$11.25 per hour.

3. Petitioner submitted a Six Month Report Form (SMRF) on or about January 29, 2015. Following a review of that form and earned income verification, the county determined that the household was eligible for \$147 in FS effective March 1, 2015, a reduction from \$194 in March.
4. The county informed petitioner about the change by a notice dated February 2, 2015.

### DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$155 per month. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FS Handbook, App. 4.6.7.

Petitioner questioned why her income could not be averaged out for twelve months because she works only during the school year, and even then she works sporadically. The Handbook, App. 4.3.2, no. 13, provides that income can be averaged for an entire year when it is contractual, such as a school teacher contract for an entire year but paid out in nine months. The respondent argues that petitioner's income is not contractual, and thus it must be budgeted for FS in the months actually received.

The main question for me is the budgeting of only the most recent paystubs. While the Handbook, at App. 1.2.4.2, provides that in general the agency should utilize the income from the last thirty days, there are situations where the last thirty days is not best indicator of income. If income fluctuates, a longer period can be used. Id.

Petitioner testified to her highly fluctuating and seasonal income. I find that petitioner has established that her work as a substitute support staff person for a school district qualifies as highly fluctuating income. The prospective income determination by the respondent does not provide an accurate assessment of petitioner's income. Determining a monthly average income based upon petitioner's annual income would provide the best evidence of petitioner's monthly earnings. The annual pay review would take into account vacation days built into the school district schedule, as well as days that petitioner does not work due to unavailability of jobs. I thus will order the county to re-determine FS using monthly income based upon petitioner's annual gross earned income.

### CONCLUSIONS OF LAW

Petitioner's monthly earned income was overestimated; it should be estimated using a longer period of time because it fluctuates.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to re-determine petitioner's household income as of March 1, 2015, using a monthly average of petitioner's annual income. The county shall take the action within 10 days 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 26th day of March, 2015.

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\sPeter McCombs  
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 March 26, 2015.

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