



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/165427

**PRELIMINARY RECITALS**

Pursuant to a petition filed April 15, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 13, 2015, at Racine, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner’s FS benefits.

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: Madeline Rice

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Racine County.
2. On February 11, 2015, the Petitioner applied for FS benefits. She reported self-employment income from her child care business and submitted 2014 tax forms. Petitioner’s Schedule C reported gross income of \$17,560, supply expenses of \$810 and a net income of \$16,750. The Petitioner did not report any rent expense. Petitioner has a household size of three.

3. On February 16, 2015, the agency issued a Notice of Decision to the Petitioner informing her that she was approved for FS benefits of \$16 for February and \$25/month effective March 1, 2015. This was based on self-employment income of \$1,395.83/month, unearned income from her daughter's SSI of \$743.48/month and rent of \$481.04/month. The agency calculated monthly self-employment income based on the Petitioner's 2014 net income of \$16,750 divided by 12 months.
4. On February 23, 2015, the Petitioner contacted the agency to report a change in her self-employment income. The agency did not inquire what the change was at that time.
5. On February 24, 2015, the agency issued a Notice of Proof Needed requesting self-employment income information with a due date of March 5, 2015.
6. On March 2, 2015, the Petitioner submitted Self-Employment Income Report Forms (SEIRFs) to the agency for January, February and March, 2015. She reported gross receipts for January as \$873.16 and expenses of \$1654. Net income was a loss of \$780.34. For February, Petitioner reported gross receipts of \$837.08 and expenses of \$1,654. Net income was a loss of \$816.92. For March, Petitioner reported gross receipts of \$350.76 and expenses of \$1,654. Net income was a loss of \$1,303.24.
7. On March 15, 2015, the agency issued a supplemental FS benefit of \$486 to the Petitioner for January and February, 2015.
8. On March 5 and March 17, 2015, the agency issued Notices of Decision to the Petitioner informing her that her FS benefits would increase to \$511/month effective April 1, 2015. This was based on self-employment income of \$0, unearned income of \$743.48/month and rent of \$481.04/month.
9. On March 18, 2015, the Petitioner contacted the agency and was told that her self-employment income changes were not due to normal business fluctuations but could be considered a change in circumstances.
10. On March 23, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would decrease to \$25/month effective May 1, 2015. This was based on self-employment income of \$1,395.83/month, unearned income of \$743.48/month and rent of \$481.04/month. The agency had reversed its earlier determination that her income changes were a change in circumstances and now determined it was normal business fluctuation.
11. On April 24, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would increase to \$91/month effective May 1, 2015. This was based on self-employment income of \$1,395.83/month, unearned income of \$743.48/month and rent of \$700/month.
12. On April 15, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

In determining the amount of FS to be issued each month, the agency must budget all of the recipient's nonexempt income, including earned and unearned income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$152 per month for a one-person household. 7 C.F.R. §273.9(d)(1); FoodShare Handbook (FSH), § 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); FSH, § 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); FSH, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH, § 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); FSH, § 4.6.7.

Earned income that must be counted includes self-employment income. To determine monthly income for an individual that is self-employed, the FS Handbook directs the agency to average self-employment income representing the household's yearly income over a 12 month period, even if the income is received within a short period of time during that 12 months. FSH, § 4.3.3.5. The Handbook further states that the agency should use the previous years' tax forms as follows:

Use IRS tax forms to average income only if:

1. The business was in operation at least 1 full month during the previous tax year,
2. The business has been in operation 6 or more months at the time of the application, and
3. The person does not claim a significant change in circumstances since the previous year.

FSH, §4.3.3.5.2.

The FS Handbook allows an agency to calculate self-employment income based on anticipated earnings rather than previous year's earnings when:

1. The business was not in operation for at least one full month in the prior tax year.
2. The business has not been in operation for six or more months at the time of the application.
3. Past circumstances do not represent the present.

Examples of changed circumstances are:

1. The start of a business.
2. The owner sold a part or all his business.
3. The owner is ill or injured and will be unable to operate the business.
4. There's a substantial cost increase causing less profit for each unit sold.
5. Sales are consistently below previous levels beyond normal sales fluctuations.
6. The business is consistently earning above previous levels beyond normal fluctuations.

Changes are effective according to the normal prospective budgeting cycle. The date of an income change is the date you agree a significant change occurred. You must judge whether the person's report was timely to decide any over or underpayment.

Self employment income, by its very nature is somewhat uncertain. Use of SEIRFs and/or IRS forms to determine monthly average income takes this into consideration.

When a new self-employment business is reported or when a change in circumstance occurs and the past circumstances no longer represent the present, recalculate self-employment income:

1. When six or more months of actual self-employment information is available, calculate monthly average self-employment income using at least six months of prior earnings beginning from the date self employment began or the date of the significant change.
2. When two or more full months of actual self-employment income information is available, use all of the actual income available to establish a monthly net income amount. See example 5.
3. When at least one full month but less than two full months of actual self-employment income information is available, calculate a monthly average net income amount using the actual net income received in any partial month of operation, the one full month of operation and an estimate of net income for the next month. See example 6.
4. When there is less than one full month of actual income information available, calculate a monthly average net self-employment income using the actual net income received in the partial month (since the change in circumstance occurred) and estimated income and expenses for the next two months. See example 7.

Use the average until the person's next review or if a significant change in circumstances is reported between reviews.

FSH, § 4.3.3.6.

The agency in this case asserts that it correctly determined the Petitioner's benefits based on the 2014 tax forms. It contends that the decrease in Petitioner's income in January, February and March, 2015 is due to normal business fluctuations that are taken into account by using the net annual income from the business last year and dividing it by twelve months.

The Petitioner asserts that January, February and March constitute a significant change in circumstances for her. She testified that she lost the business of several families at her child care and was not able to fill those positions for several months. She testified that this was not a normal business fluctuation due to the number of children involved and the length of time involved.

The Petitioner also argues that an agency worker told her to complete the SEIRFs due to her change in circumstances. She completed the SEIRFs and the agency updated her case in March finding there was a change in circumstances. The agency later changed its determination, finding this to be a situation of normal business fluctuation.

The Petitioner's SEIRFs for January and February, 2015 and the Petitioner's testimony regarding the change in her business demonstrate that the Petitioner's business had a significant change in circumstances. The agency did not present any evidence to demonstrate that a significant loss of income in consecutive months is normal business fluctuation for Petitioner's business. Though child care providers do experience fluctuations, a fluctuation from an average monthly income of \$1,395 to \$0 is significant.

The FS handbook requires the agency to employ the normal prospective budgeting cycle when a change is reported. Because the Petitioner reported the change when she submitted her SEIRFs on March 2, 2015, the change would impact her April benefits. Any change made at that time would be in effect until the Petitioner's next review or until another significant change in circumstances occurred.

The handbook requires the agency to use two full months of actual self-employment income if available to determine monthly net income. I note that the Petitioner's March SEIRF is dated March 2, 2015. Petitioner could not know her income and expenses for March at that point. However, the Petitioner also submitted January and February SEIRFs that the agency should have used to determine her income.

Petitioner testified that her circumstances did improve in April when more children enrolled; however, there was no evidence presented to allow me to determine whether this constitute a significant change in circumstances. I note that the Petitioner has the responsibility to report if her income exceeds 130% of the federal poverty level. I further note that the Petitioner's six month review should be coming up. The agency can require the Petitioner to submit SEIRFs for March, April and May to determine if there has been an increase or other change in the Petitioner's income.

I am remanding the case to the agency to re-determine the Petitioner's FS benefits based on her submission of the January and February SEIRFs to the agency in March, 2015 which demonstrated a significant change in circumstances.

### CONCLUSIONS OF LAW

The Petitioner had a significant change in circumstances that warranted a review of her FS benefits effective April 1, 2015.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency to review the Petitioner's FS benefit allotment effective April 1, 2015 based on her submission of January and February, 2015 SEIRFs to the agency on March 2, 2015. The agency shall issue a new notice of decision to the Petitioner with its determination and with new appeal rights. The agency shall also issue any supplemental FS benefits to which the Petitioner is entitled. These actions shall be completed 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 Milwaukee,  
Wisconsin, this 3rd day of June, 2015

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\sDebra Bursinger  
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 June 3, 2015.

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