



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/166104

PRELIMINARY RECITALS

Pursuant to a petition filed May 20, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on July 01, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly determined the Petitioner's FoodShare benefit for June 1, 2015, going forward.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. In March 2015, the Petitioner contacted the agency and reported new employment at [REDACTED] [REDACTED] (Exhibit 3)

3. On April 6, 2015, the Petitioner’s FoodShare case closed due to lack of income verification. (Exhibit 3)
4. On May 13, 2015, the Petitioner provided four check stubs showing the following gross income:

April 10, 2015 \$287.32
 April 24, 2015 \$294.57
 May 1, 2015 \$292.72
 May 8, 2015 \$290.22

(Exhibits 3 and 4)

5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 20, 2015. (Exhibit 1)
6. On May 27, 2015, the agency sent the Petitioner a notice indicating that his request for FoodShare benefits was denied, because he was over the income limit. (Exhibit 6)
7. Petitioner is 46 years old, but receives \$713.00 per month in Social Security Disability Income. (Testimony of Petitioner; Exhibits 3 and 6)
8. Petitioner’s household consists of one person. (Exhibit 6)
9. Petitioner pays rent in the amount of \$300.00 per month, heat included. Petitioner does not pay separately for any other utilities. (Testimony of Petitioner; Exhibit 6)

DISCUSSION

To be categorically eligible, most FoodShare group 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 households with one person is \$ 1,946.00. *FSH §8.1.1.1*

However, households that include elderly, blind or disabled members with gross income over 200% FPL, can still be found eligible for benefits, but they must have net income that does not exceed 100% FPL and countable assets that do not exceed \$3,250. *FSH §4.2.1.5* For households with one person, 100% of FPL is \$973 per month. *FSH §8.1.1.1*

The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FSH § 4.3.1.*

Petitioner’s Gross Income

Three of four of Petitioner’s paychecks included small amounts of overtime pay, \$4.57, \$2.72 and \$0.22, respectively. In addition, Petitioner’s first paycheck was for less than 40 hours of work. As such, Petitioner’s income was averaged. In calculating monthly income, a multiplier of 4.3 average weeks per month is used. *Process Help §16.4.1* Thus, Petitioner’s monthly earned income is calculated as follows:

April 10, 2015 \$287.32
 April 24, 2015 \$294.57
 May 1, 2015 \$292.72
 May 8, 2015 \$290.22

Total : \$1164.83

$\$1164.83 \div 4$ paychecks = \$291.21 per weekly paycheck

$\$291.21 \times 4.3$ average weeks per month = \$1252.20

Petitioner's total monthly income is then:

\$1252.20 earned income

+ \$713.00 Social Security Income

\$1965.20 Total Gross Monthly Income

Petitioner's income exceeds the 200% FPL Income limit of \$1946. Thus, Petitioner's net income must be determined to see if it is over the 100% FPL.

It should be noted that the Petitioner argued that the calculation of his earned income should have been limited to his regular pay, of 40 hours per week at \$7.25 an hour. Even if that had been done, Petitioner's earned income would have been calculated as:

$40 \times \$7.25 \times 4.3$ weeks a month = \$1247.00 gross monthly.

This is only about \$5.00 less than the agency's calculation which is not be enough to bring Petitioner below the 200% FPL income limit of \$1946.

Petitioner's Net Income

Once a household passes the gross income test the following deductions are applied in determining net income. (FSH, at § 4.6):

- (1) a standard deduction –

This is \$155.00 for an assistance group of 1-3 people, 7 CFR § 273.9(d)(1):

- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 CFR § 273.9(d)(2);

Petitioner's deductions works out to be as follows: $\$1252.20 \times 20\% = \250.44

- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 CFR § 273.9(d)(3);

Petitioner did not report any out of pocket medical expenses.

- (4) dependent care deduction for child care expenses, 7 CFR § 273.9(d)(4); and

Petitioner did not report any child care expenses.

- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 CFR § 273.9(d)(5).

There is a cap on this deduction of \$490 per month, unless the recipient is elderly, blind or disabled, meaning a food unit member age 60 or older or a person who receives disability or

blindness benefits from any of these programs: SSA, MA, SSI or SSI related MA, Railroad Retirement Board (RRB). FSH, §3.8.1.1.

FSH, §§ 4.6.7.1 and 8.1.3.

Applying the applicable deductions to Petitioner’s income we have the following net income calculation for May 2015:

Gross Income	\$1965.20	Rent	\$300.00
Earned Income Deduction	-\$250.44		
Standard Deduction	-\$155.00	50% Income before Shelter Ded.	-\$779.88
No Medical Expenses exceeding \$35			
No Dependent Care Expenses		<u>Excess Shelter Expense</u>	<u>\$0</u>
<u>Net Income before Shelter Ded.</u>	<u>\$1559.76</u>		
Excess Shelter Expense	- \$0		
<u>Net Income</u>	<u>\$1559.76</u>		

Petitioner’s net income of \$1559.76 is over the 100% FPL income limit of \$973.00 per month. Consequently, the agency correctly determined that the Petitioner is over the income limit for FoodShare benefits.

It should be noted that even if the agency restricted its earned income calculation to 40 hours per week at \$7.25 per hour, it again would have resulted in a net income calculation about \$5.00 less, which would not be enough to bring Petitioner below the 100% FPL income limit of \$973.00.

CONCLUSIONS OF LAW

The agency correctly denied the Petitioner’s request for FoodShare benefits, effective May 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 6th day of July, 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 July 6, 2015.

Kenosha County Human Service Department
Division of Health Care Access and Accountability