



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/167213

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 09, 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 August 26, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly discontinued the Petitioner's FS benefits.

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: Belinda Brown

Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's household size is three including herself, her husband [REDACTED] and her daughter [REDACTED].
3. Petitioner is disabled and is enrolled in the IRIS program. [REDACTED] is her paid caregiver.
4. Petitioner receives SS income of \$937/month. [REDACTED] receives SS income of \$383/month.

5. On February 6, 2015, the Petitioner submitted two pay statements for ■. One pay statement, dated November 14, 2014, reported ■'s hours for the period of October 31, 2014 – November 14, 2014 as 50 hours @ \$11.74/hour. The second pay statement, dated January 30, 2015, reported ■'s hours for the period of January 15 – 30, 2015 as 64 hours @ \$11.74/hour. That pay statement also reported year-to-date gross wages as \$1,502.72.
6. Petitioner's household has monthly shelter expenses of \$1350.
7. On April 13, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would end May 1, 2015 due to household income exceeding the program limit.

### DISCUSSION

Households that include an elderly, blind or disabled member with gross income over 200% of the FPL must be tested for FS using the regular SNAP rules. Under the regular SNAP rules, these households have no gross income limit, but must have net income that does not exceed 100% FPL and countable assets that do not exceed \$3.250. FoodShare Wisconsin Handbook (FSH) § 4.2.1.5.

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 \$155 per month for a three-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.

In this case, the Petitioner argues that ■'s income from IRIS should not be counted by the agency in determining the household's monthly income:

In determining a household's income, the following sources of income must be included as earnings in the month received:

1. Wages, tips, or salaries, including but not limited to hourly wages and piecework
2. Self-employment earnings
- ...
8. Attendant care payments provided by an outside source are treated as earned income for the attendant if the care is for a disabled household member.

The following sources of income may be disregarded by the agency in determining the household's monthly income:

1. Wages withheld as a general practice by an employer (even if in violation of law) until actually received by the employee
2. Earned Income Tax Credit ( EITC) payments
3. Earned income of any person 17 years or younger, who is a food unit member under parental control of an adult food unit member and is enrolled in an elementary, high school, technical school, or university. . .
4. Reimbursements or flat allowances for job or training related expenses.

5. Reimbursements for a volunteer's out-of-pocket expenses incurred in the course of his/her volunteer activities.
6. Income from Title I of the Domestic Volunteers Services Act only when the volunteer received FS at the time s/he joined the Title I program. . .
7. All Title II program income. These programs include:
  - a. Retired Seniors Volunteer Program (RSVP)
  - b. Foster Grandparents Program
  - c. Senior Companion Programs
8. Income from the Title V Senior Community Service Employment Program (SCSEP) of the Older Americans Act. . .
9. WIA work experience . . .
10. On The Job Training payments from the JTPA Summer Youth Employment and Training Program.
11. Allowances, earnings, and payments to participants in the National & Community Service Trust Act of 1993 (NCTSA). . .
12. Work study by a student enrolled in an institution of higher learning.
13. Repayments - See 4.5.6.7 Earned Income Repayments.
14. 2010 Census temporary employment income.

## FSH §4.3.2.1

There is no provision for disregarding ██████'s earned income from IRIS in the FSH.

In addition, I reviewed the governing federal regulations for the Supplemental Nutrition Assistance Program (SNAP). Those regulations governing the Wisconsin FS program define "household income" as

*" . . . all income from whatever source* excluding only items specified in paragraph (c) of this section." (emphasis added)

## 7 CFR 273.9(b).

Section 7 CFR 273.9(c) states: "Only the following items shall be excluded from household income and ***no other income shall be excluded.***"

- (1) Any gain or benefit which is not in the form of money payable directly to the household, including in-kind benefits and certain vendor payments.
- (2) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of \$30 in a quarter.
- (3) Educational assistance . . .
- (4) All loans . . .
- (5) Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household.
- (6) Moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member.
- (7) The earned income (as defined in paragraph (b)(1) of this section) of any household member who is under age 18, who is an elementary or secondary school student, and who lives with a natural, adoptive, or stepparent or under the parental control of a household member other than a parent.
- (8) Money received in the form of a nonrecurring lump-sum payment,
- (9) The cost of producing self-employment income. . .
- (10) Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the food stamp program. The following laws provide such an exclusion:
  - (i) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646, section 216).

- (ii) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92-203, section 21(a));
  - (iii) Any payment to volunteers under Title II (RSVP, Foster Grandparents and others) of the Domestic Volunteer Services Act of 1973 . . .
  - (iv) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94-114, section 6).
  - (v) Allowances, earnings, or payments (including reimbursements) to individuals participating in programs under the Job Training Partnership Act (Pub. L. 90-300), except as provided for under paragraph (b)(1)(v) of this section.
  - (vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540).
  - (vii) Earned income tax credits received as a result of Pub. L. 95-600, the Revenue Act of 1978 which are received before January 1, 1980.
  - (viii) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95-433).
  - (ix) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, section 5).
  - (x) Payments of relocation assistance to members of the Navajo and Hopi Tribes under Pub. L. 93-531.
- (11) Energy assistance . . .
  - (12) Cash donations based on need received on or after February 1, 1988 from one or more private nonprofit charitable organizations . . .
  - (13) Earned income tax credit payments received either as a lump sum or payments under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income tax credits received as part of the paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year).
  - (14) Any payment made to an E&T participant under §273.7(d)(3) for costs that are reasonably necessary and directly related to participation in the E&T program.
  - (15) Governmental foster care payments received by households with foster care individuals who are considered to be boarders in accordance with §273.1(c).
  - (16) Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support (PASS) which has been approved under section 1612(b)(4)(A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act. This income may be spent in accordance with an approved PASS or deposited into a PASS savings account for future use.
  - (17) Legally obligated child support payments
  - (18) At the State agency's option, any State complementary assistance program payments excluded for the purpose of determining eligibility under section 1931 of the SSA for a program funded under Title XIX of the SSA. A State agency that chooses to exclude complementary assistance program payments under this paragraph (c)(18) must specify in its State plan of operation that it has selected this option and provide a description of the types of payments that are being excluded.
  - (19) At the State agency's option, any types of income that the State agency excludes when determining eligibility or benefits for TANF cash assistance as defined by 45 CFR 260.31(a)(1) and (a)(2), or medical assistance under Section 1931 of the SSA, (but not for programs that do not evaluate the financial circumstances of adults in the household and programs grandfathered under Section 404(a)(2) of the SSA). The State agency must exclude for food stamp purposes the same amount of income it excludes for TANF or Medicaid purposes. A State agency that chooses to exclude income under this paragraph (c)(19) must specify in its State plan of operation that it has selected this option and provide a description of the resources that are being excluded. The State agency shall not exclude:
    - (i) Wages or salaries;
    - (ii) Gross income from a self-employment enterprise . . .
    - (iii) Benefits under Title I, II, IV, X, XIV or XVI of the SSA, including supplemental security income (SSI) benefits, TANF benefits, and foster care and adoption payments from a government source;

- (iv) Regular payments from a government source. Payments or allowances a household receives from an intermediary that are funded from a government source are considered payments from a government source;
- (v) Worker's compensation;
- (vi) Child support payments, support or alimony payments made to the household from a nonhousehold member;
- (vii) Annuities, pensions, retirement benefits;
- (viii) Disability benefits or old age or survivor benefits; and
- (ix) Monies withdrawn or dividends received by a household from trust funds considered to be excludable resources under §273.8(e)(8).

7 CFR 273.9(c).

Petitioner has not pointed out not can I find any provision in the federal regulations or state regulations governing the Wisconsin FS program that allow the agency to disregard ■■■'s income from the IRIS program in determining monthly household income. Petitioner's argument that such income is excluded for other purposes in federal law is not sufficient to allow the FS agency to exclude the income for purposes of the FS program. The regulations are clear that only those types of income explicitly listed in 7 CFR 273.9(c) and FSH 4.3.2.1 may be disregarded by the agency when determining household income for the purposes of calculating eligibility for FS and FS allotments.

The Petitioner provided a copy of a letter from the IRIS agency which states that certain caregiver wages may be exempt from federal income taxes. This does not mean that caregiver wages are exempt from household income for the purposes of determining FS eligibility. As noted above, only the sources of income listed in the FS regulations in 7 CFR 273.9(c) may be excluded from consideration. Caregiver wages from an IRIS program or similar program are not included in that list.

The Petitioner asserted that ■■■'s income was not accurately reflected in the January, 2015 pay statement and that he currently works 99 hours/month @ \$11.74/hour. The Petitioner was advised that she must submit 30 days of the most recent pay statements of ■■■ and the agency will update his income and re-determine eligibility.

The Petitioner also asserted that the agency did not properly apply medical expenses. The Petitioner testified that she has not paid out of pocket medical expenses in the past but that she has expenses of \$312.89 out of pocket for 2015 and a spenddown of \$5500. The Petitioner was advised to provide receipts of out-of-pocket medical expenses that have not been paid and the agency will review the expenses to determine if they can be applied for purposes of determining FS eligibility.

The Petitioner also asked that I review DHS Operations Memo 11-49. The subject of the memo is 2012 FoodShare Mass Changes and is dated 8/29/2011. It notes that mass changes effective October 1, 2011 include maximum excess shelter deduction, income limit and allotment amounts, standard deductions and utility allowances. I do not find the memo to be relevant to this case as it has been superseded by Ops Memos 12-48 and 14-37. The mass changes reported in those memos have been applied by the agency in this case.

I reviewed the agency's calculations for FS eligibility for Petitioner's household effective May 1, 2015. The agency properly determined ■■■'s monthly earned income was \$1,502.72 based on the January, 2015 pay statement submitted by the Petitioner. The agency properly determined monthly unearned income of the Petitioner and her daughter of \$1,320 (\$937 + 383). The agency properly applied an earned income deduction of \$300.54 ( $\$1,502.72 \times 20\%$ ) and a standard deduction of \$155. The agency properly calculated a shelter deduction of \$612.41 based on shelter costs of \$1350 and the maximum utility standard of \$446. Based on the agency's calculations, the Petitioner's net adjusted income of \$1,754.77 exceeds the net income limit of \$1,650. The agency properly determined the Petitioner's household was

not eligible for FS benefits effective May 1, 2015 based on the information supplied and known to the agency at that time.

Petitioner was advised that if she submits updated income or expense information, she will receive a new Notice of Decision from the agency and new appeal rights if she disagrees with that determination.

**CONCLUSIONS OF LAW**

The agency properly discontinued the Petitioner’s FS benefits effective May 1, 2015.

**THEREFORE, it is ORDERED**

That the Petitioner’s appeal 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 1st day of September, 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 September 1, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability