



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/168319

PRELIMINARY RECITALS

Pursuant to a petition filed August 27, 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 September 23, 2015, at Madison, Wisconsin. At the request of petitioner, the record was held open for the submission of consecutive written closing arguments by the agency and by petitioner. Those closing arguments are received into the hearing record.

The issue for determination is whether the county agency correctly discontinued the petitioner's FoodShare (FS) benefits effective September 1, 2015, due to household net income above the FS net income eligibility limit for a FS group of five.

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: [REDACTED], ESS lead worker
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County who has primary placement of her four children. Her ex-husband and the father of her children is [REDACTED].
2. The petitioner received FoodShare (FS) benefits for a household of five (petitioner and her four children).
3. The petitioner received BadgerCare (BC) Plus benefits for herself and two of her children for a BC household of three. Petitioner only claimed those two children on her taxes for health care purposes. The petitioner is intending to file taxes for 2015, and her two children are her tax dependents for 2015.
4. The petitioner's other two children are being claimed on the taxes of her ex-husband, [REDACTED].
5. The Department of Workforce Development notified the county agency to investigate whether petitioner failed to timely report to the county agency her employment and income from two of her employers, [REDACTED] ([REDACTED]) and [REDACTED]. See Exhibit 1.
6. The county agency sent a July 2, 2015 Notice of Action and Proof Needed to the petitioner requesting verification of her employment and income from three employers: a) [REDACTED]; b) [REDACTED] [REDACTED] [REDACTED] ([REDACTED]); and c) [REDACTED] [REDACTED] by the due date of July 13, 2015. Petitioner did not submit the verification by July 13, 2015, but did provide the verifications by July 29, 2015.
7. The employer verifications confirm the following income to the petitioner as a part-time instructor for the following institutions for September, 2015: a) [REDACTED] - \$800 lump sum payment for her work on a quarterly basis from July through September, 2015; b) [REDACTED] - \$309.86 every other week for a total of \$619.72 for September, 2015; and c) [REDACTED] [REDACTED] - irregular work of about 2 hours per week for a total of \$129 for September, 2015.
8. The petitioner received weekly Unemployment Compensation (UC) benefits of \$241 as of September, 2015.
9. The petitioner received during September, 2015 monthly child support unearned income of \$187.50 for each of her four children.
10. The petitioner's BadgerCare (BC) counted income of \$2,512.72 was above the BC premium limit of \$1,674.17 for September, 2015, and thus she owed a monthly BC premium of \$101 effective September 1, 2015. See Exhibit 2.
11. Based upon the submitted verification, the county agency determined that petitioner's household was above the FS income limits.
12. The county agency sent an August 10, 2015 Notice of Decision to the petitioner stating that her FS benefits would discontinue effective September 1, 2015, due to household net income above the FS income eligibility for a group of five. See Exhibit 2. The petitioner's net household income of \$2,869.46 was above the net income limit of \$2,326 as of September, 2015. See Exhibit 2.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget **all earned and unearned income of the FS household**. 7 C.F.R. §273.9(b). This includes child support, Supplemental Security Income (SSI), Social Security Retirement, SSDI, child support, and W-2 payments received by household members. FoodShare Wisconsin Handbook, Appendix section 4.3.1.

FS benefits are calculated pursuant to 7 C.F.R. § 273.9. The maximum FS allotment amounts, based on household size, are listed at FoodShare Wisconsin Handbook, Appendix 8.1. In general, a household must *initially* pass the so-called “**gross income limit**”. The FS eligibility calculation process allows for certain deductions from gross income to arrive at a “**net income**” then tested against a “**net income limit**”. But this process only occurs if the household *first* passes the gross income test. If the applying household does not pass the gross income test, then the net income test, and the applicable deductions, are not even reached.

The gross income limit test does not apply to households with or disabled members. FoodShare Wisconsin Handbook. “Disabled” means that the applicant is receiving one of the following: Supplemental Security Income (SSI) or Disability Insurance Benefits (DIB) from the Social Security Administration; interim assistance pending a SSI or DIB application from the Social Security Administration; SSI-State Supplement benefits from the State in which he or she resides; Veteran’s Administration benefits of certain types; retired federal workers receiving disability payments; and railroad workers receiving an annuity under the Railroad Retirement Act of 1974. See, 7, C.F.R. § 271.2 *Definitions. Elderly or disabled member*, at §§ (1-11); see also, 7 C.F.R. § 273.9(d)(3). (“Elderly” means 60 years old or older.) *Ibid.*

In this case, petitioner is not elderly and disabled and therefore the gross income limit test does apply to her. However, the petitioner’s gross household income was not above the gross income eligibility limit for a FS household of five.

During the September 23, 2015 hearing and in her written closing arguments, ESS [REDACTED], presented a well-organized and well documented case to establish that the county agency correctly discontinued the petitioner’s FoodShare (FS) benefits effective September 1, 2015, due to net household income above the FS income eligibility limits for a household of five. The petitioner did point out that the agency had some incorrect information in the initial calculation of her household income on earlier notices sent to the petitioner. However, after receiving the verification from petitioner’s employers and information clarification from petitioner, the agency accurately re-calculated the petitioner’s household’s net income as set forth in Findings of Fact #7-9 and #11-#12 above. Petitioner was unable to refute with any reliable evidence the county agency’s case that it correctly calculated the petitioner’s household’s net income.

In this case, the petitioner’s household’s income did not pass the net income test. The petitioner was unable to refute that her September, 2015 net household income of \$2,869.46 was above the FS net income limit of \$2,326 for a FS household of five. Accordingly, based upon the above, I must conclude that the county agency correctly discontinued the petitioner’s FoodShare (FS) benefits effective September 1, 2015, due to household net income above the FS net income eligibility limit for a FS group of five.

As dicta, if the petitioner’s household income decreases, she may wish to re-apply for FS benefits for her household.

CONCLUSIONS OF LAW

The county agency correctly discontinued the petitioner’s FoodShare (FS) benefits effective September 1, 2015, due to household net income above the FS net income eligibility limit for a FS group of five.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 Madison,
Wisconsin, this 25th day of November, 2015

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on November 25, 2015.

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