



FH

[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed December 7, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on January 6, 2016, at Green Bay, Wisconsin.

The issue for determination is whether the agency correctly reduced the petitioner's FS allotment effective January 1, 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: [REDACTED], ES Spec.
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. The petitioner receives FS as a household of one person. Prior to January 2016, her monthly allotment was \$194. She gets jobs through a temporary employment agency, and on November 16, 2015, she reported commencement of a new job at [REDACTED] to the agency.
3. The agency requested verification of projected earnings at the newly reported job. On November 27, 2015, the agency received wage verification from the employer. The verification form declared that the petitioner would work 20 to 40 hours weekly, at \$9.50 per hour. *See*, Exhibit 2.
4. The agency budgeted income at the level of 25 hours worked weekly (\$237.50 weekly). As a result, the petitioner's FS allotment dropped to \$16. On December 1, 2015, the agency mailed written notice to the petitioner advising that her FS would be reduced to \$16 effective January 1, 2016. The petitioner appealed.
5. The petitioner's actual gross earnings from the three paystubs she presented at hearing were \$318.25 (33.5 hours) paid on 11/1/2015, \$212.14 (22.33 hours) paid on 11/8/2015, and \$314.64 (33.12 hours) paid on 11/15/2015. The fourth November paystub was not proffered. These hours average out to *more* than the 25 hours weekly level that the agency used to calculate income. *See*, Exhibit 4, paystubs.
6. A rent expense and utility standard can be partially deducted from income in an FS case; the petitioner is having the telephone utility standard deducted. At the time of her September 14, 2015, periodic case review, the petitioner reported that she had no rent expense. She did state that her rent amount can fluctuate, based on her income. From September 15 through at least December 31, 2015, the petitioner did not report an increased rent expense. *See*, Exhibit 1, Case Comments.

DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for January 2016, onward. The gross income was based on November 2015 verification, submitted by the employer. There is no dispute as to the agency's arithmetic in the calculation. The budgeting calculations here were performed prospectively. Prospective budgeting should reflect what the petitioner is likely to receive, on average, each month. *FS Wisconsin Handbook (FSWH)*, 4.1.1, viewable online at www.emhandbooks.wisconsin.gov/fsh/. For earned income that is received biweekly, the agency is directed to develop a biweekly average, and then multiply that figure by 2.15 to account for three-paycheck months. For weekly income, the multiplier is 4.3. 7 C.F.R. §273.10(c)(2).

In calculating the petitioner's January allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county start with gross, rather than net, income, and allow only a limited number of identified deductions from that income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a case with one to three persons is currently set at \$155, per *FS Wisconsin Handbook*, 8.1.3. Twenty percent of any earned income is then subtracted as the Earned Income Deduction; that deduction was correctly given here. A Dependent Care Deduction is also taken if the petitioner incurred day care expenses in order to go to work, an Excess Medical Expense Deduction is subtracted for an elderly or disabled person's allowable medical expenses that exceed \$35 per month, and child support paid out garners a deduction. There is no record of the latter three expenses here. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of that income. 7 C.F.R. §273.9(d)(6)(ii). Based on a zero rent/shelter cost plus the \$30 telephone utility standard, the petitioner's shelter costs totaled \$30. This did not exceed half of the adjusted income (\$331), so no excess shelter cost was deducted in the allotment calculation.

Thus, the January 2016 allotment calculation correctly looked like this:

Gross income	1021.25
Minus Earned Inc. Deduction	- 204.25
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-155.00</u>
Adjusted Income	662.00
Minus Shelter Deduction	<u>-000.00</u>
Net Income	662.00

The correct allotment for one person with net income of \$662.00 was \$16 in January 2016. *FS Wisconsin Handbook*, 8.1.2, p.6.

The petitioner argued that the agency budgeted too much income. However, the agency's figures were verified by the employer in November and by the paystubs that the petitioner produced at hearing. No contrary earnings documentation was offered. The petitioner also pointed out at hearing that her rent cost increased to \$253, effective January 1, 2016. This is verified by a letter, dated December 22, 2015, from a housing manager. *See*, Exhibit 4. This verification was not received in time (in December) to affect the amount of the January allotment; it will affect her allotment for February and beyond.

CONCLUSIONS OF LAW

1. The Department correctly determined the petitioner's FS allotment for January 2016.

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 Madison,
Wisconsin, this 11th day of January, 2016

\sNancy J. Gagnon
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 January 11, 2016.

Brown County Human Services
Division of Health Care Access and Accountability