



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOO - 176017

PRELIMINARY RECITALS

Pursuant to a petition filed on August 8, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS), a hearing was held on September 29, 2016, by telephone.

The issue for determination is whether the agency correctly determined the amount of petitioner's FoodShare allotment for July 2016.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. On May 24, 2016, petitioner submitted a letter to the agency from her new prospective employer at [Redacted]. The letter indicated that the petitioner was to start working on

May 23, 2016, that the employer anticipated having an average of 20-25 hours per week of work to give to petitioner and that the starting rate of pay would be between \$8.00 to \$9.50 per hour, depending upon the type of work.

3. On May 25, 2016, the agency sent the petitioner a Notice of Decision informing her that her FoodShare allotment would decrease to \$20 in the beginning of July due to the increase in her income from the reported employment at [REDACTED]. This notice was returned as undeliverable.
4. The petitioner contacted the agency on June 8, 2016 to provide updated address/contact information but no new information related to her employment was received. As a result of this contact, a second notice was sent to the petitioner's new address on June 9, 2016 confirming the decrease in her FoodShare allotment for July.
5. On July 11, 2016, the petitioner contacted the agency to inform them that she was no longer employed at [REDACTED].
6. On July 14, 2016, the agency received a letter from human resources at [REDACTED] verifying for the agency that the petitioner "was never hired or assigned to any clients due to a conflict in scheduling."
7. There is no documentation that the petitioner ever worked any hours or received any income from [REDACTED].
8. Petitioner's FoodShare allotment was increased effective August 1, 2016 based upon the verification of non-employment received July 14, 2016.

DISCUSSION

Elderly, Blind and Disabled FoodShare households without earned income must report listed changes in earned income, some unearned income amounts, address and child support obligations, within 10 days. See, *FoodShare Wisconsin Handbook*, 6.1.1. Any other FS household not within the EBD classification is subject to reduced reporting requirements, i.e., it is only required to report income changes if income exceeds 130% of the Federal Poverty Level. See, *FoodShare Wisconsin Handbook*, 6.1.3. Such reporting is to be done by the 10th of the month after the income has increased about 130%. Ibid.

Any changes reported to the agency must be acted upon. See, *FoodShare Wisconsin Handbook*, 6.1.1.2. Further, the agency must count income if it is "reasonably certain" the person will receive it; however, uncertain income should not be counted:

If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income.

7 CFR § 273.10(c)(1)(i). Any anticipated income is counted only in the months it is expected to be received. 7 CFR § 273.10(c)(2). The household is responsible for reporting a change in the income source and/or amount. 7 CFR § 273.12(a)

In the present matter, the petitioner provided the agency with verification of prospective employment that anticipated income of at least \$8.00 per hour and at a minimum of 20 hours per week beginning on May 23, 2016. As a result of this anticipated increase in income, the agency calculated the petitioner's anticipated gross income as \$919.12, which resulted in the petitioner receiving decreased FoodShare benefits in the amount of \$20.00 per month effective the beginning of July. The petitioner did not report a change in her employment status until July 11, 2016 and on July 14, 2016 the agency received verification that the petitioner had not received any income from the reported employer. The petitioner does not dispute the facts that led to the decrease in her FoodShare benefits for July 2016. Although I am sympathetic that the petitioner did not receive any income from the anticipated employment, the burden would have been on her to report the change in this information to the agency.

Finally, because the exact amount of the anticipated income petitioner was to begin receiving from [REDACTED] was uncertain, i.e. it was to vary between \$8.00-\$9.50 per hour averaging between 20-25 hours per week, only that portion of the anticipated income that could be determined with reasonable certainty should have been counted. Accordingly, because [REDACTED] letter states that the petitioner would receive minimally \$8.00 per hour at a minimum of 20 hours per week, the agency should not have calculated the anticipated income at the higher rate of pay or greater hours per week unless further verification was received to confirm same.

CONCLUSIONS OF LAW

- (1) The agency was entitled to decrease the amount of petitioner's FoodShare allotment effective July 1, 2016, due to receipt of verification of anticipated income from [REDACTED];
- (2) The agency incorrectly calculated the amount of the decrease of petitioner's FoodShare by considering income at a rate of pay and number of hours per week above the reasonably certain minimum amount set forth in the letter from [REDACTED].

THEREFORE, it is

ORDERED

That this matter is remanded to the agency for re-determination of the amount of the petitioner's FoodShare allotment effective July 1, 2016 using the \$8.00 per hour rate of pay at 20 hours per week. This action 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, **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 4th day of October, 2016

\s _____
Kristin P. Fredrick
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 October 4, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability