



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOO - 176066

PRELIMINARY RECITALS

Pursuant to a petition filed August 8, 2016, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Brown County Human Services to reduce FoodShare benefits (FS), a hearing was held on September 7, 2016, by telephone.

The issue for determination is whether the county correctly reduced FS based upon petitioner's new income.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: 
Brown County Human Services
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Brown County.
2. Until September 1, 2016 petitioner was receiving the maximum monthly FS allotment or \$194 for a one-person household.

3. In late-July, 2016 the county did a renewal with petitioner. He reported working for [REDACTED]. The county worker obtained verification from the employer (the "EVFE") that petitioner was expected to work 8-16 hours per week at \$9.00 per hour. The worker verified directly with [REDACTED] that petitioner was expected to work two days per week for the next several weeks.
4. The worker read the form to say 8-16 hours daily. See 7/29/16 case note. Thus she understood it to mean that petitioner could work 16-32 hours per week, so she entered 24 hours weekly work, which amounted to \$216 income each week.
5. By a notice dated August 1, 2016, the county informed petitioner that FS would be reduced to \$17 effective September 1, 2016. Benefits were continued at the higher level pending this decision.

DISCUSSION

FS allotments are based upon a household's prospective income, meaning that the agency must estimate the household's income for the month in which FS are to be received. FS Handbook, Appendix 4.1.1. Income from the past 30 days typically is used to make the estimate, but if income fluctuates, the worker must determine a monthly average using prior months' income. 7 C.F.R. §273.10(c)(1) and (2); Handbook, App. 1.2.4.2. If a job is new the agency may use statements from employers to verify prospective income. Handbook, App. 1.2.4.2.

In this case Ms. [REDACTED] correctly utilized a statement from petitioner's employer to calculate petitioner's prospective income. Because the statement was unclear about the number of hours petitioner would work each week, she called the employer and was told that he would be working two days per week for the upcoming weeks. However, Ms. [REDACTED] misread the EVFE. It estimated that petitioner would work 8-16 hours per week, but she read it to say 8-16 hours per day. The 8-16 hours per week appears to be the correct hours since the EVFE also says that petitioner's work hours would be 3 p.m. to 11 p.m. Thus if petitioner worked one day, he would work 8 hours, but if he worked two days he would work 16 hours.

I conclude that the FS should have been calculated based upon 16 hours per week rather than 24. Based upon those hours petitioner's monthly income would be \$619.20, and I did a quick calculation to determine that his FS allotment would be \$92. It does not matter that he actually worked 21 hours per week; the FS for September should have been based upon the EVFE estimate of 16 hours per week.

I will remand the case to the county to re-determine petitioner's FS for September. The re-determination will be a "paper" one only because petitioner already received \$194 FS based upon the continued benefits order. The FS should stay at the re-determined amount unless petitioner has to report an increase in income (although petitioner actually worked 21 hours per week into early September, he testified that he has not been called by [REDACTED] at all in recent days), or he reports a decrease in income.

CONCLUSIONS OF LAW

Although the county correctly used an EVFE to calculate petitioner's income from his new job, the worker budgeted too many hours based upon a misreading of the EVFE.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to recalculate petitioner's FS for September and beyond using 16 hours weekly employment at [REDACTED] instead of the 24 hours originally used,

and to inform petitioner of the correct FS amount and the income level at which he would be required to report an increase. The county shall do so within 10 days 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 9th day of September, 2016

\s _____
Brian C. Schneider
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 9, 2016.

Brown County Human Services
Division of Health Care Access and Accountability