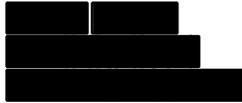




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/170375

PRELIMINARY RECITALS

Pursuant to a petition filed November 30, 2015, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Marathon County Dept. of Social Services to reduce FoodShare benefits (FS), a hearing was held on February 10, 2016, by telephone. Hearings set for December 22, 2015 and January 10, 2016 were rescheduled at the petitioner’s request.

The issue for determination is whether the county correctly determined petitioner’s FS due to a change in in Department policy.

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By: 
Marathon County Dept. of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Marathon County.
2. Petitioner receives FS as a one-person household. She received \$110 in FS in November, 2015.
3. Petitioner had a review in November. She reported that her rent decreased from \$270 to \$224. Heat and electricity are included in the rent.

4. The Department changed its policy toward counting shelter expenses in the FS determination. Previously all FS households received a \$458 utility expense. The policy changed to provide that only expenses actually paid by the household can be counted. Petitioner received only a \$30 telephone expense in the December, 2015 FS calculation. As a result of the changes, petitioner's FS decreased to \$16 effective December 1, 2015.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt 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. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 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); FS Handbook, App. 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); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 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); FS Handbook, App. 4.6.7.

In November, 2015, petitioner's shelter deduction was \$392.11 resulting from rent of \$270 and a utility expense of \$458. For December she received no shelter deduction because her rent was just \$224 and her utility expense was just \$30 for her telephone. The \$254 shelter expense was less than one-half of petitioner's income.

Prior to the federal 2014 Farm Bill the Wisconsin Department of Administration issued an annual energy assistance payment of \$1 to all FS households who were not already receiving energy assistance. This policy allowed Wisconsin to grant all FS households the Heating Standard Utility Allowance of \$458. Actual utility usage did not matter.

The 2014 Farm Bill changed this practice. The 2014 Farm Bill requires a household to have received an energy assistance payment of greater than \$20 to receive the \$458 utility standard. 7 U.S.C. 2014(e)(6)(C)(ii)(I). Therefore households that do not receive energy assistance receive the utility standard based on the utility obligation actually incurred by the household. Petitioner did not receive energy assistance and her only monthly utility obligation is her phone.

Petitioner's primary emphasis at the hearing was that her health condition requires her to eat special and expensive food. As noted above, one of the deductions from income is the Excess Medical Deduction, which is described at 7 C.F.R. §273.9(d)(3). That subsection provides for a deduction from income of "[t]hat portion of medical expenses in excess of \$35 per month, *excluding special diets*, incurred by any household member who is elderly or disabled as defined in §271.2." Emphasis added. The federal regulations are mandates that must be followed unless exceptions are made within the regulations. There is no exception to the rule that special diets cannot be considered in determining the Excess Medical Deduction.

I must conclude that the agency correctly reduced petitioner's FS. The change was due to a change in policy that was forced by federal FS law. Petitioner testified that the reduction has left her in a difficult financial situation. FS amounts are determined by a mathematical formula; individual workers and administrative judges do not have authority to deviate from the formula. The Division of Hearings and Appeals does not have authority to order a higher FS amount than the amount calculated using the FS rules.

CONCLUSIONS OF LAW

The agency correctly reduced petitioner's FS due to reductions in her rent and shelter expense.

THEREFORE, it is **ORDERED**

That the petition for review 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 15th day of February, 2016

\sBrian 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 February 15, 2016.

Marathon County Department of Social Services
Division of Health Care Access and Accountability