



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOO - 175068

PRELIMINARY RECITALS

Pursuant to a petition filed on June 16, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services regarding FoodShare benefits (FS), a hearing was held on August 30, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly calculated the petitioner's monthly FoodShare (FS) benefits in the amount of \$78 effective June 1, 2016 and \$83 effective July 1, 2016.

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, WI 53703

By: [REDACTED]
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Winnebago County. She is the only person in her FoodShare (FS) household. She is an elderly, blind, or disabled household.

2. In April 2016 the petitioner completed a renewal of for her FS benefits.
3. The petitioner's monthly income consists of \$816.78 from social security.
4. The petitioner pays \$150 in monthly rent. She also receives energy assistance.
5. In April 2016 the petitioner provided receipts from [REDACTED] and [REDACTED] pharmacy for her prescription copays and over the counter medications for the five month period from December 2015 through April 2016. The majority of the receipts for the over-the-counter medications were for Mucus DM or Robitussin. I have reviewed the receipts and added up the total of the medications excluding the Mucus DM and the Robitussin. The agency did the same. The agency's amount is noted on their FS budget effective July 1, 2016. My total, excluding the Mucus DM and Robitussin, is less than the agency's total. The agency has given the petitioner every benefit of the doubt, and thus I will use the total provided by the agency on the FS budget effective July 1, 2016.
6. On May 9, 2016 the agency sent the petitioner a notice stating that effective June 1, 2016 her FS benefits were reduced from \$92 to \$78.
7. Following this May 9, 2016 notice the petitioner contacted the agency. She discovered that her over the counter medications were not being deducted.
8. On May 17, 2016 the petitioner provider a letter from her doctor stating that she needed Zyrtec, Vitamin D3, Vitamin B-12, Benadryl, Loperamide HCL, Liquid drop of Vitamin C, Calcium-Vitamin D-Vitamin K, Prenatal multi vitamin, Ferrous gluconate, and Floraniex. This letter did not state that the petitioner needed Mucus DM or Robitussin.
9. On May 26, 2016 the agency sent the petitioner a notice stating "on the letter from [REDACTED] dated May 17, 2016 there is no Mucus DM or Robitussin listed. To include those, we need a new doctor statement including those." The listed due date was June 6, 2016.
10. On June 2, 2016 the agency sent the petitioner a notice stating that effective July 1, 2016 her monthly FS benefits would increase from \$78 to \$83. The petitioner's FS benefits increased because the agency was budgeting \$45.62 in monthly medical costs. Much of these costs were the over-the-counter medications excluding the Mucus DM and Robitussin.
11. The petitioner did not provide the requested doctor letter regarding the Mucus DM and the Robitussin on or before the listed due date of June 6, 2016.
12. On June 20, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
13. At the hearing, the petitioner provided a letter from her doctor stating:

She previously had been using guaifenesin-dextromethorphan over-the-counter for chronic cough, and spent up to \$575 on these medications. These were then not reimbursed because these medications were deemed not medically necessary by me. [The petitioner] continues to use these medications. Please reimburse her accordingly if you see fit.
14. At the hearing, the petitioner also provided a 2011 letter from her Asthma and Allergy doctor stating:

Please be advised that [the petitioner] has been a patient of ours since 1992. She is seen for asthma and allergies. We have recommended for years that she continue to take a daily antihistamine along with a mucus thinner, i.e. guaifenesin, which now comes under the general category of 'mucus relief.' She takes Mucinex D, where she gets the decongestant along with gualfenesin to help with mucous and allergy symptoms. [The petitioner] also takes Robitussin DM for her continued problems

with respiratory issues. These medications no longer require prescriptions and she needs to purchase them over-the-counter.

DISCUSSION

In calculating the petitioner's FS 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 the county to start with gross income, deducting a limited number of identified deductions from that income to calculate the adjusted 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 household size of 1 is \$155, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3).

An excess medical deduction is available when an elderly, blind, or disabled household verifies allowable medical expenses exceeding \$35. *FSWH*, 4.6.4.1. Allowable medical expenses include doctor and medical fees, prescription medications, insurance payments, and over-the-counter medication when approved by a licensed practitioner or other qualified health professional. *Id.*

An Excess Shelter Deduction can be subtracted if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii). All reported changes that cause an increase in the FS benefits are effective the month following the report month. *FSWH*, 6.1.3.3.

The agency is required to verify financial information. See *FSWH*, 1.2.4. Medical expenses for an elderly, blind, or disabled household must be verified at renewal or certification if there is more than a \$25 change for the expense to be used in the FS benefit calculation. *FSWH*, 1.2.4.8.

In this case the petitioner presents several arguments. Her first argument is that the agency did not properly include all of her over-the-counter medication expenses. I agree with the petitioner with respect to the medication expenses, excluding Mucus DM and the Robitussin, for her FS benefits effective May 1, 2016. Although the petitioner provided receipts in April 2016, the agency did not begin counting these expenses until the petitioner's July 2016 FS benefits. I understand that the petitioner did not provide a doctor's note until May 2016, however, the agency never asked for that verification, and never gave the petitioner an opportunity to provide that verification in April 2016. The agency should have sent out a verification request in April 2016 after the petitioner provided receipts. They failed to do that. The petitioner provided the receipts in April for over-the-counter medications approved by her doctor. The agency should have counted those expenses in the petitioner's FS benefits effective May 1, 2016. Thus, the petitioner is entitled to total monthly FS benefits for May, June, July, and August 2016 in the amount of \$83.

This leaves the issue of the medication costs for Mucus DM and Robitussin. The petitioner provided receipts for these medications in April 2016. When the agency received the list of medications from the petitioner's primary care doctor in May 2016 these medications were not listed. The agency sent a verification request to the petitioner a new doctor statement including these medications. The due date for this verification was June 6, 2016. The petitioner did not provide a letter until the hearing on August 30, 2016. Had the petitioner timely provided the requested verification, I would have counted these medication costs effective May 1, 2016. This verification though was not provided until the hearing.

I further note that the petitioner's primary care doctor does not think that these medications are necessary. However, the petitioner provided an additional letter from her asthma doctor indicating that these medications are necessary. Given the conflicting medical experts opinions, I will give the petitioner every benefit of the doubt and include these medications effective September 1, 2016, not before. The

petitioner did not provide verification or a change report until the August 2016 hearing. Changes reported one month, go into effect the following month. Thus, these expenses should be reflected on the petitioner's September 2016 FS benefits and forward.

The petitioner's final argument is that she needs additional FS benefits due to a special diet that she must follow. She states that she must eat nutritious fruits and vegetables because she has had gastric bypass surgery previously. Her doctor notes that she should eat high fiber food including green leafy vegetables.

The FS regulations do not allow for additional FS benefits for someone who requires a "special diet." The same calculation is used for all households receiving FS benefits. An elderly, blind, or disabled household can receive an excess medical deduction. There is no other special provision for a special diet. In fact, the FS manual specifically states, "special diets whether or not the diet is related to a medical condition" is not an allowed expense. *FSWH*, 4.6.4.2.

Finally, the petitioner argues that she should be able to deduct expenses related to her cat because her cat acts as a therapy animal. The agency agreed to include the cat's expenses if the petitioner provided a letter stating that the cat was her therapy animal. The petitioner provided that letter at the hearing. As of the hearing, she had not yet provided receipts for the cat's expenses. She had those receipts with her, and was going to provide a copy of the receipts to the agency the following day. If these receipts were provided in August, these expenses would be reflected on the petitioner's September 2016 FS benefits. If the receipts are provided in September, the agency can begin deducting the expenses effective October 1.

CONCLUSIONS OF LAW

- (1) The agency incorrectly calculated the petitioner's monthly FoodShare (FS) benefits in the amount of \$78 effective May 1, 2016 and \$83 effective July 1, 2016.
- (2) The petitioner's monthly FS benefits from May 1, 2016 through August 1, 2016 are \$83.
- (3) Effective September 2016 the petitioner's FS benefits will increase to include her Mucus DM, Robitussin, and cat expenses if she provides verification of the cat expenses to the agency in August 2016.

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions to issue the petitioner a total of \$83 in monthly FS benefits for May 1, 2016 through August 1, 2016. The agency must issue any additional FS benefits due to the petitioner for those months. The agency must then recalculate the petitioner's FS benefits for September 2016 giving her credit for the Mucus DM and Robitussin costs as well as the cat expenses if she provided verification of the cat expenses in August 2016. The agency must comply with this order within 10 days from the date of 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 Milwaukee,
Wisconsin, this 12th day of September, 2016

\s _____
Corinne Balter
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 12, 2016.

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