



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



DECISION

FOO/142319

PRELIMINARY RECITALS

Pursuant to a petition filed July 12, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 09, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly terminated the Petitioner's FS benefits effective August 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner's household size is 5 which includes 2 adults and 3 minor children.

3. On July 2, 2012, the agency issued a Notice of Decision to the Petitioner notifying her that her FS benefits would be discontinued effective August 1, 2012 because her household income exceeds the program limit.
4. Petitioner's monthly household gross earned income is \$3,740.57. Her monthly rent expense is \$850. She pays utilities. The Petitioner's net adjusted income calculated by the agency is \$2,811.46. The net income limit for the program is \$2,181 for a household of five.
5. On July 12, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Petitioner testified that she does not dispute the agency's calculation of her gross monthly income. I reviewed the agency's budget screen. With a gross monthly income of \$3,740.57, the Petitioner is below the gross income limit of \$4,362 for a household of five.

The agency deducted an earned income deduction of \$748.11 (20% of gross income) and a standard deduction of \$181 for a net adjusted monthly household income of \$2,811.46. These deductions are accurate. I note that the agency calculated monthly shelter/utility costs of \$1,294 (\$850 rent and a utility standard of \$444). The Petitioner is not eligible for a shelter deduction because shelter/utility costs are less than 50% of adjusted income ($\$2,811.46 \times .50 = \$1,405.73$). Because the net adjusted income of \$2,811.46 is above the net income limit of \$2,181, the Petitioner is not eligible for FS benefits.

The Petitioner does not dispute the agency's calculations. She testified that she and her husband got behind on paying household bills because she had to take a leave of absence from her job and was then terminated from employment for a period before finding another job. She stated that her husband was on W-2 but recently found a job. She requested additional time on FS benefits to allow the household to catch up on bills.

Neither the agency nor an administrative law judge have authority to act in equity. In other words, we are bound by the regulations in determining eligibility for FS benefits and cannot find eligibility where an individual does not meet the criteria for eligibility. I recognize the difficult position of the Petitioner but I have no authority to grant the equitable relief she requests.

CONCLUSIONS OF LAW

The agency properly terminated the Petitioner's FS benefits effective August 1, 2012.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of September, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee Enrollment Services - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 7, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability