



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]

DECISION

FOO/143908

PRELIMINARY RECITALS

Pursuant to a petition filed September 17, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 16, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee County Department of Human Services (the agency) correctly determined Petitioner's FoodShare allotment effective October 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Interpreter:

Gemethu Getrchew

Respondent:

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

By: Nikita Howse

Milwaukee County Department of Human Services
1220 W. Vliet Street
1st Floor, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On July 6, 2012, the agency sent Petitioner a notice of negative action, indicating that effective June 22, 2012, her FoodShare benefit would be reduced from \$526.00 per month to \$345.00 per month. (Exhibit 3)
3. On September 10, 2012, the agency sent Petitioner a notice indicating that her FoodShare benefit would increase from \$345.00 per month to \$384.00 per month. (Exhibit 6)
4. Petitioner submitted a request for fair hearing that was received by the Division of Hearings and Appeals on September 17, 2012. (Exhibit 1)
5. The agency subsequently issued a supplement of \$181.00 per month for August and September 2012, because Petitioner began receiving Transitional FoodShare benefits on May 1, 2012, in the amount of \$526.00 and was entitled to such benefits through September 2012. (Exhibit 4; Petitioner's testimony; Ms. Howse's testimony)
6. Petitioner's assistance group size is 4. There are no elderly, blind or disabled members in her household. She pays \$580.00 in rent. (Petitioner's testimony)

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits, though the gross income test does not apply where a household has a member over age 60. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FSH § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *Emphasis added. FSH §4.1.1.*

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving a decrease in benefits, the agency bears the initial burden to establish that it correctly calculated Petitioner's FoodShare allotment.

The agency was unable to provide the documents upon which it based its determination of Petitioner's husband's earned income. Petitioner testified to what she believed her husband earned, but she did not have any documentation to prove what his income might have been. Consequently, there is insufficient information in the record for me to make an accurate determination concerning Petitioner's FoodShare benefits.

It should be noted that Petitioner testified that on October 15, 2012, her husband submitted to the agency verification of his unemployment. The agency indicated that because Petitioner's husband submitted the verification prior to an October 18, 2012 cut-off date, the reported change in income will likely affect the Petitioner's October benefits.

Because the agency's ultimate determination concerning Petitioner's FoodShare benefit effective October 1, 2012 is still uncertain, this matter must be remanded to the agency for verification of Petitioner's household income and redetermination of his benefits, if it has not already done this.

If Petitioner disagrees with the agency's ultimate determination concerning her FoodShare benefits effective October 1, 2012, she can file a NEW appeal.

CONCLUSIONS OF LAW

The agency has not established that it correctly determined Petitioner's FoodShare allotment effective October 1, 2012.

THEREFORE, it is

ORDERED

That the agency verify Petitioner's household income, taking into consideration any timely reporting of changes in Petitioner's household income. It is also ordered that the agency then re-determine the FoodShare allotment to which Petitioner is entitled, if any, effective October 1, 2012, forward. The agency shall take steps to do all of this within ten days of this decision, if it has not already accomplished these tasks.

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 served and 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, 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 1st day of November, 2012.

Mayumi M. Ishii
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 November 1, 2012.

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