



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/145025

PRELIMINARY RECITALS

Pursuant to a petition filed November 01, 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 November 27, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency met its burden to show that it correctly reduced petitioner's FS benefits effective October 1, 2012 because one child left petitioner's home for college.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Alma Lezama

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochran
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On August 29, 2012 the petitioner reported to the agency that one of her children was moving out of her home to go to college, as the college requires that the child live on campus. This changed her household composition to a household of two for FS purposes.
3. On September 27, 2012 the agency issued a notice to petitioner stating that effective October 1, 2012 her FS would decrease due to a decrease in household size.
4. Petitioner's gross monthly income for FS purposes is \$2182.68.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. § 273.9(b). From the gross household income, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6.1 are allowed: a standard deduction, an earned income deduction, a medical expenses deduction, a child support payment deduction, a dependent care expense deduction, and a shelter expense deduction. Some FS groups are not allowed a deduction for some expenses and some expenses are not always deducted in full. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wi.gov/fsh/>.

In this case, petitioner did not disagree with the calculation of the household income, and I have reviewed the information post-hearing as well and find no errors in the computations. Petitioner's testimony at hearing regarded the sufficiency of the FS once her child was removed from her case. Based on the information before me, the agency appears to have ultimately calculated the benefits correctly based on the best available evidence it had to make its determination.

First, I agree that the agency was required to remove the child from the petitioner's FS case. One of the nonfinancial factors the agency must consider in determining FS is the residence of the applicant and his/household. According to the policy on residency, and any absence from a household:

Include in the household an individual temporarily absent from the household when the expected absence is no longer than 2 full consecutive calendar months past the month of departure. Some examples are absence due to illness or hospitalization, employment, and visits.

To be considered temporarily absent, one must meet ALL of the following conditions:

1. The individual must have resided with the food unit immediately before the absence,
2. The individual intends to return to the home, and the food unit must maintain the home for him/her,
3. If the absent person is a child, the caregiver of the absent child is responsible for the child's care and control when the child returns to the home, and
4. If the absent person is an *adult*, the adult must still be responsible for care and control of the child during their absence.

Attending school - Persons temporarily absent to attend a school is not a reason to remain included in the food unit.

FS Handbook, §3.2.1.2 (emphasis added).

Second, as to the sufficiency of the allotted FS: the household's monthly gross income totals \$2182.68. The deductions were given for the earned income deduction (\$436.53/20% of the gross monthly

countable earned income), standard deduction (\$149), and shelter deduction (\$442.77), bringing the net income total to \$1154.38. The shelter deduction is determined by the food unit's reported and verified monthly expense obligation for the current residence for shelter. The agency is to deduct shelter and utility obligation amounts (not actual amount paid) which exceed 50% of the food unit's net income after all other deductions are made. *FS Handbook*, §4.6.7.1. I can find no error in the determination of the shelter deduction.

After arriving at the household's net income, there is a line that reads, "30% of Net Adjusted Income." This 30% figure is then subtracted from the net adjusted income, and the difference is the allotment that is issued per the federal FS regulations that require it:

(ii)(A) Except as provided in paragraphs (a)(1), (e)(2)(iii) and (e)(2)(vi) of this section, the household's monthly allotment shall be equal to the maximum food stamp allotment for the household's size reduced by 30 percent of the household's net monthly income as calculated in paragraph (e)(1) of this section. If 30 percent of the household's net income ends in cents, the State agency shall round in one of the following ways:

(1) The State agency shall round the 30 percent of net income up to the nearest higher dollar; or

(2) The State agency shall not round the 30 percent of net income at all. Instead,

(B) If the calculation of benefits in accordance with paragraph (e)(2)(ii)(A) of this section for an initial month would yield an allotment of less than \$10 for the household, no benefits shall be issued to the household for the initial month.

7 CFR §273.10(e)(2)(ii). See online at <http://www.gpoaccess.gov/cfr/index.html>. The subtraction of the 30% is built into the allotment table referenced in the *FS Handbook* at §8.1.2. Thus, the agency deducted 30% of petitioner's net income (or \$ 346.20) from the maximum FS allotment accordingly. Based on this, petitioner was eligible for \$20 in FS ongoing, which was what was issued by the agency.

Based on the information before me, the agency appears to have ultimately calculated the benefits correctly. I remind the petitioner that if her income decreases, or has other changes to her household, she must report and verify that to the agency so her FS can be redetermined. I add for petitioner's information that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. As such, I cannot change policy or law because I find it unfair.

CONCLUSIONS OF LAW

The agency met its burden to show that it correctly reduced petitioner's FS benefits effective October 1, 2012, because one child left petitioner's home for college.

THEREFORE, it is

ORDERED

That the petition for review herein 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 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 18th day of December, 2012

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



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 December 18, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability