



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/145817

PRELIMINARY RECITALS

Pursuant to a petition filed December 10, 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 January 30, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee Enrollment Services (the agency) correctly reduced Petitioner's FoodShare benefits, effective January 1, 2013.

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, HSPC Sr.
Milwaukee Enrollment Services
1220 W. Vliet St.
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. Effective January 2013, Petitioner's Social Security Retirement Income increased from \$588.88 per month to \$598.00 per month. (Exhibits 4 and 7)

3. On December 3, 2012, the agency sent Petitioner a notice indicating that his FoodShare benefits would be reduced from \$134.00 to \$130.00, because his income increased. (Exhibit 9)
4. Petitioner's Assistance Group Size is 1. (Testimony of Petitioner)
5. Petitioner is 63 years old and considered elderly for FoodShare purposes. (Exhibit 4, Petitioner's testimony)
6. Petitioner pays between \$450 - \$500 per month towards his mortgage. His son pays the remainder of the mortgage. (Testimony of Petitioner; Exhibit 9)

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. *FSH §4.1.1.*

Once a household passes the gross income test the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction –

This was is \$147 per month for a household of 1, but effective October 1, 2012, this was changed to \$149 per month, *7 CFR § 273.9(d)(1)*:

- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).*

The heating standard utility allowance (HSUA) used to be \$444, but effective October 1, 2012, this was changed to \$442 per month.

There used to be a cap of \$459.00 on the shelter cost deduction, *unless* a household has an elderly, blind or disabled member. Effective October 1, 2012, it was changed for \$469 per month.

FSH, §§ 4.6.7.1 and 8.1.3.

The term 'disabled' is a term with a definition as to the FoodShare program:

3.8.1.1 EBD Introduction

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: SSA, MA, SSI or SSI related MA, Railroad Retirement Board (RRB).
FSH, §3.8.1.1.

Applying the foregoing to Petitioner we have the following net income calculation, effective January 1, 2013:

Gross Income	\$598.00	Rent	\$450.00
No Earned Income Deduction		HSU	\$442.00
Standard Deduction	-\$149.00	50% Net income	-\$224.50
No Medical Expenses exceeding \$35			
No Dependent Care Expenses		Excess Shelter Expense	\$667.50
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Net Income	\$449.00		
Excess Shelter Expense	-\$667.50		
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Net Income	\$0		

Individuals, in a household of one, with a net income of \$0 qualify for a FoodShare allotment of \$200.00 per month. *FSH §8.1.2.*

Looking at the FoodShare budget printout, it appears that the agency forgot to include the portion of the mortgage paid by Petitioner. However, this was listed in the notice of decision mailed to Petitioner on December 3, 2012. (See Exhibits 8 and 9)

CONCLUSIONS OF LAW

The agency incorrectly reduced Petitioner’s FoodShare benefits, effective January 1, 2013.

THEREFORE, it is ORDERED

That the agency increase Petitioner’s FoodShare allotment to \$200 per month, effective January 1, 2013, if Petitioner is otherwise entitled to such benefits. The agency shall take steps to do this within ten days of this decision.

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 11th day of February, 2013.

\sMayumi 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 February 11, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability