



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/146314

PRELIMINARY RECITALS

Pursuant to a petition filed January 03, 2013, 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 23, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's FoodShare allotment was correctly discontinued.

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: Mary Hartung

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a notice of decision that informed her that her FoodShare benefits were to end effective January 1, 2013. The reason for the discontinuance was that Petitioner's income was in excess of income limits for her household size.

3. Petitioner's household size is three. This consists of Petitioner, her child and Petitioner's nephew. In December 7, 2012 Petitioner contacted the agency to report that her nephew had moved into her home.
4. Petitioner is employed. She submitted pay stubs to the agency which indicated that Petitioner averages \$12.36 an hour at a frequency of 75.12 hours bi-weekly and \$18.54 an hour of overtime at a frequency of 11.34 hours bi-weekly. The agency found that this totals \$2449.45 per month. Additionally, Petitioner receives Kinship Care for her nephew in the amount of \$220.00 per month.
5. Petitioner's shelter expenses were correctly determined in the eligibility formula.
6. Petitioner is not blind, disabled nor over age 60
7. At the hearing Petitioner reported paying child care in the amount of about \$280.00 per month.

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 an elderly blind or disabled member. *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); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* Kinship Care payments are unearned income of the child the payment is for and is counted. *FSH, §4.3.4.2.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.* When a recipient is paid on a bi-weekly basis, as here, her bi-weekly pay is averaged and multiplied by 2.15 to arrive at an estimate of monthly income accounting for the fact that the average month is 4.3 weeks in length.

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

- (1) a standard deduction - which currently is \$149 per month for a household of 3 persons, *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).* There is a cap of \$459.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.1 and 8.1.3.*

Multiplying Petitioner's hourly rate by hours worked gives me a figure within \$1.50 of the agency figure. That difference can be attributed to rounding. With Petitioner's income alone she was receiving \$16.00 of FoodShare but the addition of the \$220.00 of Kinship Care the household income was pushed above FoodShare income limits. The Division of Hearings and Appeals cannot change the formula that FoodShare eligibility and allotment levels are based on. Thus I conclude that Petitioner's FoodShare were correctly discontinued because of an increase in household income; i.e., the Kinship care benefit.

At the hearing, however, Petitioner did report that she has a child care expense of approximately \$280 per month. This had not previously been reported. She was encouraged to reapply for FoodShare benefits as that child care expense would possibly offset the Kinship Care so as to restore eligibility for FoodShare.

CONCLUSIONS OF LAW

That the agency has correctly discontinued Petitioner's FoodShare as of January 1, 2012 based on the information available to it at the time of the discontinuance.

THEREFORE, it is

ORDERED

That this appeal 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 4th day of March, 2013

\sDavid D. Fleming
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 March 4, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability