



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147145

PRELIMINARY RECITALS

Pursuant to a petition filed February 04, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Marinette County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 08, 2013, at Marinette, Wisconsin.

The issue for determination is whether respondent correctly reduced petitioner's FS benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Joan Weidman

Marinette County Department of Human Services
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

ADMINISTRATIVE LAW JUDGE:

Peter McCombs

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marinette County.
2. In October, 2012, petitioner received \$278.00 in monthly FS benefits for a two-person household. Exhibit 2.

3. On October 15, 2013, respondent sent a notice to petitioner advising her that, as of November 1, 2012, her monthly FS benefits would decrease from \$278.00 to \$92.00. That notice specified that respondent was counting more of petitioner's income because her housing and/or utility expenses had decreased. The notice further indicated that petitioner could request a hearing on the reduction by filing a Fair Hearing request by January 31, 2013.
4. On December 3, 2012, respondent sent a notice to petitioner advising her that, as of January 1, 2013, her monthly FS benefits would decrease from \$92.00 to \$89.00.¹ That notice specified that the reduction was the result of a member of the household receiving more income. The notice further indicated that petitioner could request a hearing on the reduction by filing a Fair Hearing request by April 2, 2013.
5. Petitioner filed a Request for Fair Hearing on February 4, 2013. Exhibit 1.

DISCUSSION

FoodShare recipients must appeal negative decisions within 90 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Adm. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. The agency notified the petitioner on October 15, 2012, that her FoodShare would decrease on November 1, 2012. The evidence received indicates that the agency properly and timely informed the petitioner that her benefits would be reduced effective November 1, 2012. I have no evidence that petitioner appealed the November 1, 2012, reduction on or before the appeal deadline of January 31, 2013. Because the petitioner's instant appeal was filed on February 4, 2012, I lack subject matter jurisdiction over the November 1, 2012, reduction in FS benefits.

The petitioner's appeal is timely as the January 1, 2013 reduction. In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction (see, 7 C.F.R. §273.9(d)(1); FS Handbook, § 4.6.2) and an earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, § 4.6.3. A third possible deduction is for medical expenses exceeding a monthly minimum for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, § 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FS Handbook, § 4.6.7.

I must find that the reduction to \$89.00 was correct. I am unaware of any uncertainty regarding the household income that petitioner is receiving. The ESC budgeted \$1,545.42 total household income as of November, 2012; the total household income for January, 2013 was \$1,552.42. Based upon an increase in income of \$7.00, petitioner's FS benefits were reduced by \$3.00. I have reviewed the respondent's calculations, and do not note any error. Petitioner noted that her shelter expenses (rent) have increased. The respondent indicated that said information would be noted prospectively following the hearing.

I conclude that the respondent has demonstrated that it correctly reduced FS benefits effective January 1, 2013, due to petitioner's increased income.

¹ After petitioner filed the instant request for fair hearing, but before the hearing was held, the respondent sent a notice dated February 12, 2013, to petitioner advising her that, as of February 1, 2013, her monthly FS benefits would decrease from \$89.00 to \$84.00. That reduction is not at issue in this decision, as the reduction was not apparently known to petitioner at the time of the instant appeal, and respondent had no notice of appeal of that decision. I note that petitioner has until May 14, 2013 to file a Request for Fair Hearing contesting the February 1, 2013, reduction in FS benefits.

CONCLUSIONS OF LAW

The respondent correctly reduced FS benefits when petitioner's income increased.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 Madison,
Wisconsin, this 26th day of March, 2013

\sPeter McCombs
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 26, 2013.

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