



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147557

PRELIMINARY RECITALS

Pursuant to a petition filed February 22, 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 March 27, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly determined the sufficiency of the petitioner's February, 2013, FS allotment.

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: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is the casehead of a four person FS assistance group. The household was receiving \$323 of FS in January, 2013.
2. In January, 2013, the petitioner's gross household income totaled \$1,563.56, as computed in the agency Summary, Exhibit #1, p.1.
3. In February, 2013, the petitioner's gross household income increased to a total of \$1,901.86, because she was receiving child support averaging \$214.80 per month per the KIDS database, and

SSI benefits to two children had increased by \$12 each child. This gross income is as reflected in the agency Summary, Exhibit #1, at p.1.

4. The agency calculated the petitioner's FS allotment for February, 2013, as shown in Exhibit #1, at p. 6.
5. The petitioner's rent is \$525 per month. She is not employed and does not have any out-of-pocket child care expenses. Nor did she ever allege or report out-of-pocket medical expenses occur on regular basis for her two disabled children receiving SSI. After consideration of her rent and the Standard Utility Allowance, the agency deducted an *excess* shelter expense deduction of \$255.22; and allowed the standard deduction of \$160. The agency computed that as a result, she had net adjusted income of \$1,148.34 after deductions, and the household was entitled to \$219 of FS in February, 2012.
6. On January 11, 2013, the county agency issued a Notice to the petitioner informing her that her FS would be decreased from \$323 to \$219, effective February 1, 2013, due to increased household child support income and unearned income.
7. On February 22, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals. Benefits were not continued pending the hearing decision.

DISCUSSION

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, which currently is \$160 per month for a household with four people. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FoodShare Wisconsin Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FoodShare Wisconsin Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FoodShare Wisconsin Handbook, App. 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); FoodShare Wisconsin Handbook, App. 4.6.7.

In a fair hearing concerning the sufficiency of FS issued, the burden of proof is on the Department to demonstrate that it correctly computed the petitioner's FS allotments, and the petitioner must then rebut this evidence with her own evidence showing the agency was incorrect.

I have reviewed the FS budget for February, 2013. I can find no error. Nor has the petitioner specifically pointed to any error. Rather, she admits all of the Social Security income streams counted by the agency are present, and admits that child support was about \$214 per month as budgeted, in recent months. Rather, she asserted that the payor father sometimes precipitously stops paying child support. In that event, she should report him to child support for enforcement and report the loss of income to the FS agency. The agency FS allotment determination must be sustained on these facts.

CONCLUSIONS OF LAW

That the county agency correctly determined the sufficiency of the petitioner's February, 2013, FS allotment.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby 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 Madison,
Wisconsin, this 28th day of March, 2013

\sKenneth D. Duren, Assistant Administrator
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 March 28, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability