



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147649

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regards to the sufficiency of FoodShare benefits (FS), a telephone hearing was held on March 27, 2013, at Milwaukee, Wisconsin. The petitioner voluntarily withdrew the appeal, but then appeared on the scheduled hearing date making a motion, de facto, for a rehearing. That motion was granted from the bench; and an ORDER granting the rehearing was subsequently issued in writing.

The issue for determination is whether the county agency 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, HSPC
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. He is a one-person FS household, and he was receiving \$200 of FS in each of the months of December, 2012, and January, 2013. The agency computed his January, 2013, FS as shown in what was marked by the county agency as Exhibit #6.

2. On January 3, 2013, the petitioner reported to the county agency that he had just taken a new residence address and was not paying rent. The agency discontinued a shelter expense in his FS budget for February, 2013, as a result of this report. See, Summary, county marked as Exhibit #4.
3. On January 3, 2013, as a direct result of the petitioner's report that he had no rent, the agency calculated the petitioner's FS allotment for February, 2013, as shown in county marked Exhibit #9.
4. On January 7, 2013, the county agency issued a Spanish language Notice to the petitioner informing him that his FS would be decreased from \$200 to \$33, effective February 1, 2013, because his rent had decreased.
5. On February 12, 2013, the petitioner first reported to the agency after January 3, 2013, that he was paying rent at his new residence and verified the expense. See, Summary, county marked as Exhibit #4.
6. On February 25, 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 \$149 per month for a one-person household. 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 his own evidence showing the agency was incorrect.

The *FoodShare Wisconsin Handbook* provides for the following treatment of shelter related expenses, and defines what is allowed, and what is not. The policy states:

4.6.7.2 Allowable Shelter Expenses

Shelter expenses that are deductible include:

1. Rent
2. Home mortgage and property taxes (if not in the mortgage)
3. Countable utility expenses
4. Mobile home lot rent and loan payments
5. Insurance on the structure (if not included in the mortgage). If a household has a homeowner's insurance policy that includes insurance on the structure and household contents, but the costs cannot be separately identified, the total cost is allowable. **Note:** renter's insurance is not an allowable shelter deduction.
6. Second mortgages (regardless of what the mortgage is used for)
7. Special assessments.
8. Condominium fees or condo association fees.

Do not count as shelter or utility expenses such surcharges as pet expenses, extra garage rentals, or air conditioning surcharges. The monthly amount of rent should be taken into consideration each month when the shelter deduction is determined without regard to when the rent is actually paid. Only allow current monthly expenses. DO NOT include arrearages, late charges or discounts for early payment.

FSWH, § 4.6.7.2.

The only error that the petitioner has alleged is that the agency incorrectly determined his shelter expense in the February, 2013, FS budget.

This case turns on whether the petitioner reported on January 3, 2013, (or at any other time in January) that he was not paying rent, or conversely that he was. If he did not pay rent in January, 2013, then he was not entitled to a shelter expense for the February, 2013, FS allotment under prospective budgeting.

The petitioner asserted that he did pay rent in January and reported it in January. He provided no other proof beyond this mere assertion that it was so.

The agency representative replied with two entries from the Case Comments, as described in Findings of Fact #2 & #5. In short, the comments reflect that he told the agency on January 3, 2013, that he was not paying rent, and he did not assert otherwise until February 12, 2013, after his FS were reduced for February.

To this testimony, the petitioner then asserted, through an interpreter, that he “did not have time for this”, and he was going to leave the hearing site. At that point, however, the record was complete anyway, and after offering him the opportunity to make any final observations or argument, the record was completed and closed by the hearing officer.

I find the petitioner’s testimony that he paid rent for January, 2013, to be convenient, self-serving, uncorroborated by any document or receipt, or any other credible witness, post-hoc rationalization in light of the reduction of his FS, contradicted by the testimony of Ms. Bridges and the Case Comments of record and the date of the Notice given him, and not credible.

The petitioner has failed to rebut the agency case, and the agency has established by the preponderance of the evidence that he did not report any rent for January until February 12, 2013, and therefore the agency correctly did not budget any shelter expense for February, 2013, FS, resulting in a reduction of benefits in that month. His FS was restored to the \$200 maximum level, effective March, 2013 FS, after he verified rent expenses on February 12, 2013. I find no error in the agency actions here.

CONCLUSIONS OF LAW

That the county agency correctly determined the sufficiency of the petitioner’s February, 2013, FS allotment is \$33.

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

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The preceding decision was sent to the following parties on March 28, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability