



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148039

PRELIMINARY RECITALS

Pursuant to a petition filed March 17, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on April 18, 2013, at West Bend, Wisconsin.

The issue for determination is whether the agency properly reduced the Petitioner's benefits for April, 2013.

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: Julie Williamson

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. On March 13, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be reduced effective April 1, 2013 to \$39/month.

3. Petitioner's household size is two. Her monthly rent expense is \$585. At the time of the Notice of Decision in March, 2013, the Petitioner was receiving unemployment compensation of \$363/week.
4. On March 17, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

In determining the amount of FS to be issued each month, the agency is 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 two-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. No other deductions or expenses are allowed to be considered.

In a fair hearing concerning the sufficiency of FS issued, the burden of proof is on the agency 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.

In this case, the agency produced the evidence to demonstrate that the Petitioner was receiving \$363/month in unemployment compensation benefits. Per the regulations, the agency calculated this as monthly unearned income of \$1,560.90 (\$363 x 4.3 weeks). The agency correctly applied the standard deduction of \$149 for an adjusted income of \$1,411.90. Per the regulations, the agency calculated an excess shelter expense deduction of \$321.05. Petitioner's rent is \$585/month. The agency applied the utility standard of \$442 for total shelter/utility costs of \$1,027/month. Per the regulations, the deduction is 50% of adjusted income, in this case \$705.95. The agency correctly determined the excess shelter expense of \$321.05 (\$1,027 - \$705.95). The agency thus calculated the net adjusted income as \$1,090.85 (\$1,411.90 - 321.05) which is under the net income limit of \$1,261 for a household size of two. Thus, the Petitioner is eligible for FS benefits.

The maximum FS allotment for a household of two is \$367/month. Based on net adjusted income of \$1,090.85, the agency properly calculated the Petitioner's allotment as \$39/month for April, 2013 (\$367 - 30% of net adjusted income or \$327.30).

The Petitioner testified that the agency failed to include other expenses such as her car expense, insurance, and phone. The agency is bound by the federal FS regulations when determining FS eligibility and allotments. The regulations do not allow deductions for those expenses. The agency did provide a deduction for utilities and rent. The Petitioner's request to consider items that are not allowed by regulation to be considered is a request for equitable relief. Administrative law judges do not have authority to grant equitable relief from regulations but must apply the regulations as they are written. Based on the evidence presented, I conclude that the agency properly calculated the Petitioner's benefits for April, 2013 in accordance with the FS regulations.

The Petitioner further testified that she had recently obtained employment resulting in a change in her income. She recently reported that change to the agency. Because the change occurred in April, 2013, the change is processed for benefits beginning May 1, 2013. At the hearing, the case worker indicated that a new Notice of Decision would be issued to the Petitioner regarding how her change in income

would affect her FS benefits. It was explained to the Petitioner that she would have a separate right to appeal that determination if she disagrees with it and that this decision applies only to the benefit determination for April, 2013.

CONCLUSIONS OF LAW

The agency properly calculated the Petitioner's FS benefits for April, 2013.

THEREFORE, it is

ORDERED

That the petition be, and 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 Milwaukee,
Wisconsin, this 15th day of May, 2013

\sDebra Bursinger
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 May 15, 2013.

Washington County Department of Social Services
Division of Health Care Access and Accountability