



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148859

PRELIMINARY RECITALS

Pursuant to a petition filed April 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 May 23, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's FoodShare benefits were correctly discontinued because of net income in excess of FoodShare net income limits.

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: Paul Frederickson
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 notified that her FoodShare was to be discontinued effective May 1, 2013 because of income in excess of FoodShare net income limits.
3. Petitioner's household size is 3; herself and her two grandsons.

4. Petitioner receives Social Security retirement income in the amount of \$1171.90 per month. She also receives a private pension in the amount of \$102 per month. She also receives additional private pension in the amount of \$283.71 per month. She receives \$220 a month to kinship care benefits for her grandchildren. This totals \$1786.61 per month. (Agency budget sheets indicate that Petitioner's income is \$1777.61 per month; there is no explanation for the \$9.00 difference but as Petitioner's income as determined by the agency is less than just noted, the difference can have no affect here.)
5. The agency became aware that Petitioner's second grandchild receives Social Security surviving child benefits in the amount of \$898.00 per month. This was added to Petitioner's household income.
6. Petitioner pays a Medicaid part B premium in the amount of \$104.90.
7. Petitioner is credited with deductions for shelter as well as a medical expense deduction for the Medicaid part B premium. The agency use \$795.00 as Petitioner shelter costs in its allotment calculation. At hearing Petitioner provided estimates as to shelter costs amount to \$805.90 but without supporting documentation.
8. Petitioner is 65 years of age.

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.* Gross Social Security benefits are included as income. *FSH, §4.3.4.2, #5.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

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 1 person, *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.*

There were very minor differences in income and expenses between what was noted in the budget sheets and the numbers noted at the hearing. Nonetheless, these total only \$9.00 dollars for the income and approximately \$10 for the expenses. This is not enough to change the determination that Petitioner's household net income is in excess of FoodShare net income limits. Indeed, with net income after deductions of more than \$2400 Petitioner's household net income is well in excess of the net income limit of \$1591.00 for a household of 3. *See FSH, §8.1.1.*

CONCLUSIONS OF LAW

That the agency has correctly discontinued Petitioner's FoodShare benefits because of net income in excess of FoodShare net income limits allotment.

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 21st day of June, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
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 June 21, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability