



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/149706

PRELIMINARY RECITALS

Pursuant to a petition filed May 31, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on June 20, 2013.

The issue for determination is whether petitioner's FS medical expense deduction was calculated correctly.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Kristy Warden, ES Supervisor
Kerri Ingersoll, ESS
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner is receiving FS through the County.

3. On May 7, 2013 the County received 26 pages of medical expenses from petitioner; many of those expenses had already been paid in a prior FS certification period.
4. In calculating the amount of FS petitioner is eligible for each month the County did not deduct from petitioner's income the medical expenses that had already been paid in a prior FS certification period (although other medical expense were deducted).

DISCUSSION

Petitioner argues that her FS medical expense deduction was not calculated correctly because the County did not deduct medical expenses that had already been paid in a prior FS certification period.

The amount of a person's monthly FS allotment depends, in part, on the person's income: in general, the higher the income the lower the allotment. 7 C.F.R. § 273.10 (2011); *FoodShare Wisconsin Handbook* ["FWH"] 4.3.1 & 7.1.1. When calculating an FS allotment gross income must be used. 7 C.F.R. §§ 273.9(a)(1) & 273.10(c) (2011); FWH 4.3.2. For purposes of FS *income* includes all income from whatever source both earned and unearned. 7 C.F.R. §§ 273.9(b)(1) & (2) (2011); FWH 4.3.1, 4.3.2. & 4.3.4.

Certain specified deductions from gross income are allowed when calculating net income for FS purposes. The only allowed deductions are: standard deduction; earned income deduction; excess medical deduction, dependent care deduction; child support deduction; homeless shelter deduction; excess shelter deduction¹; and, standard utility allowance. No other deductions are allowed. 7 C.F.R. § 273.9(d) (2011); FWH 4.6.1.

The excess medical deduction is only for members of the FS household who are elderly, blind, or disabled. Medical expenses incurred by a member of the FS household who is not elderly, blind, or disabled do not qualify for the excess medical deduction. 7 C.F.R. § 273.9(d)(3)intro. (2011); FWH 4.6.4. Further, the excess medical deduction is only for that portion of medical expenses that is in excess of \$35.00 per month. 7 C.F.R. § 273.9(d)(3)intro. (2011); FWH 4.6.4.

Medical expenses for previously acquired charges that have not yet been paid², as well as current payments, are allowed. Medical expense payments made during the certification period are allowable. However, medical expenses paid prior to the certification period are not allowable. FWH 4.6.4.1. Thus, the County was correct not deduct from petitioner's income medical expenses that had already been paid in a prior FS certification period. It follows that petitioner's FS medical expense deduction was calculated correctly.

Petitioner testified that it is not fair not to deduct the medical expenses paid in a prior certification period because she was not told what to do and was not told what to send in. An Administrative Law Judge

¹ Shelter expenses include rent/mortgage/condo fees, property taxes, utilities (with some limitations), and insurance. 7 C.F.R. § 273.9(d)(6)(ii) (2011); FWH 4.6.7.1. When calculating utilities the actual amount paid for utilities is not used; instead, a Standard Utility Allowance ["SUA"] is used. 7 C.F.R. § 273.9(d)(6)(iii) (2011); FWH 4.6.7.2. In order for a person to qualify for an excess shelter deduction that person's shelter expenses must be in excess of 50% of their income after all other deductions are allowed. 7 C.F.R. § 273.9(d)(6)(ii) (2011); FWH 4.6.7.1.

² Previously acquired charges include charges incurred anytime before or during the certification period, as long as the individual is still obligated to pay the expense and the incurred expense has not been previously allowed as a FS deduction.

["ALJ"] does not have the power to order that the medical expenses in question be deducted due to such confusion. ALJs do not possess any equitable powers and must apply the law as it is written.³

CONCLUSIONS OF LAW

For the reason discussed above, petitioner's FS medical expense deduction was calculated correctly.

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

³ Final Decision Case No. A-40/44630 [Department of Health and Social Services (DHSS) December 30, 1987] adopting Proposed Decision Case No. A-40/44630 [Office of Administrative Hearings (OAH) October 19, 1987]; "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). "No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944); See also, *Neis v. Education Board of Randolph School*, 128 Wis.2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985). "As a general matter, an administrative agency has only those powers as are expressly conferred or necessarily implied from the statutory provisions under which it operates [citation omitted]". *Brown County v. DHSS Department*, 103 Wis.2d 37, 43, 307 N.W.2d 247 (1981). "An agency or board created by the legislature has only those powers which are expressly or impliedly conferred on it by statute. Such statutes are generally strictly construed to preclude the exercise of power which is not expressly granted. [citation omitted]" *Browne v. Milwaukee Board of School Directors*, 83 Wis.2d 316, 333, 265 N.W.2d 559 (1978).

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 10th day of July, 2013

\sSean P. Maloney
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 July 10, 2013.

Brown County Human Services
Division of Health Care Access and Accountability