



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/150022

PRELIMINARY RECITALS

Pursuant to a petition filed June 17, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Walworth County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on August 20, 2013, at Elkhorn, Wisconsin. A hearing previously scheduled for July 9, 2013, was rescheduled at petitioner's request.

The issue for determination is whether respondent properly determined petitioner's FS benefits for July and August of 2013.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Mia Anderson-Inman

Walworth County Department of Human Services
W4051 County Rd NN
Elkhorn, WI 53121-1006

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County.
2. Petitioner was an on-going recipient of FS benefits in June of 2013.

3. On June 11, 2013, respondent notified petitioner that her monthly FS benefits would decrease from \$149.00 to \$16.00 effective July 1, 2013, due to an increase in child support and an increase in earned income.
4. Respondent conceded at hearing that the child support should not have been included, as it had stopped. However, respondent noted that this budgeting error would not impact the FS benefit allotment.
5. Petitioner paid a rent obligation in July and August of 2013.

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 based upon the size of the household. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin Handbook, § 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, § 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, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FoodShare Wisconsin Handbook, § 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, § 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.

In the present case I am unable to conclude that the respondent has met its initial burden of proof. Testimony at hearing revealed that child support was incorrectly budgeted. While the respondent's representative credibly testified that the error was harmless, i.e., the correction of the error would not result in a higher amount of FS benefits, it certainly justifies questioning of the remaining calculations. The questionable math is further contested by the petitioner, who indicated that she was not aware that she could include rent expenses in her FS budget. This appears to be a function of confusion on the part of the petitioner regarding the eligibility requirements for separate public assistance programs, FS and child care. Still, respondent conceded that there may have been worker error here.

As such, I will remand this matter to the respondent to review and re-determine petitioner's July and August, 2013 FS benefits, taking into account all applicable deductions, as noted hereinabove.

CONCLUSIONS OF LAW

Respondent has not demonstrated that it correctly computed the petitioner's FS allotments for July and August, 2013.

THEREFORE, it is

ORDERED

That this matter be remanded to the respondent to, within 10 days following issuance of this Decision, review and re-determine petitioner's July and August, 2013 FS benefits, applying all deductions for which petitioner may qualify.

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 20th day of September, 2013

\sPeter McCombs
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 September 20, 2013.

Walworth County Department of Human Services
Division of Health Care Access and Accountability