



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/152405

PRELIMINARY RECITALS

Pursuant to a petition filed September 27, 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 November 21, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee Enrollment Services (the agency) correctly reduced Petitioner’s FoodShare allotment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Yia Xiong, Income Maintenance Specialist II
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On August 16, 2013, Petitioner applied for FoodShare benefits. (Exhibit 2, pgs. 1-20)

3. On August 19, 2013, the agency sent Petitioner a notice indicating that she would receive \$161.00 in FoodShare benefits for August 2013 and \$313.00 in benefits for September 2013. (Exhibit 1, pgs. 41-42)
4. On September 30, 2013, the agency sent Petitioner a notice indicating that as of October 1, 2013, her FoodShare benefits would be reduced to \$42.00 per month. (Exhibit 2, pgs. 59-64)
5. Petitioner filed a request for fair hearing that was received on September 27, 2013. (Exhibit 1)
6. Petitioner's household consists of two people. (Testimony of Petitioner)
7. No one in the household is elderly, blind or disabled. (Testimony of Petitioner.)
8. In September 2013, Petitioner received two checks for disability benefits totaling \$915.00; one for \$315.00 and one for \$600.00. (Testimony of Petitioner; Exhibit 2, pgs. 10 and 11)
9. Petitioner's son receives Social Security Survivor's benefits in the amount of \$797.00 per month. (Testimony of Petitioner; Exhibit 2, pg. 9)
10. Petitioner pays a mortgage of \$1,500 per month and homeowner's insurance in the amount of \$300 per month.

DISCUSSION

“A notice of adverse action or negative action, regarding the termination or reduction of benefits must be mailed at least 10 days before the effective date of the action. When the last of these 10 days falls on a weekend or holiday, extend the notice of adverse action period to the next working day.” *FoodShare Wisconsin Handbook (FSH) §6.3.1*

The agency sent Petitioner notice on September 30, 2013, that effective October 1, 2013 her benefits would be reduced from the \$313.00 she received in September to \$42.00 per month. That was only one day notice. Consequently, the agency did not correctly reduce Petitioner's benefits. If the agency wishes to reduce Petitioner's benefits, it will have to give her the required ten day notice.

It should be noted that Petitioner also contested the agency's calculation of her allotment.

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 a member over age 60. *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.* 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 in determining the FoodShare allotment. (*FSH, at § 4.6*):

- (1) a standard deduction –

This was \$149 per month for a household of 1-3 people during part of the time in question, but effective October 1, 2013, was changed to \$152 per month, *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).

During part of the time in question, the heating standard utility allowance (HSUA) was \$442, but Effective October 1, 2013, it was changed to \$450 per month.

During part of the time in question there was a cap of \$469.00 on the shelter cost deduction, *unless* a household has an elderly, blind or disabled member. Effective October 1, 2013, it was changed for \$478 per month.

FSH, §§ 4.6.7.1 and 8.1.3.

The term ‘disabled’ is a term with a definition as to the FoodShare program:

3.8.1.1 EBD Introduction

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: [SSA](#), [MA](#), [SSI](#) or SSI related MA, Railroad Retirement Board ([RRB](#)).

FSH, §3.8.1.1.

Petitioner initially appealed because she felt that the allotment she received of \$200 per month in September and October 2013 was not correct or sufficient to meet her needs. However, \$200 is the maximum allotment allowed for a one person household/assistance group. *FSH §8.1.2.*

At the hearing Petitioner stated that the \$16.00 allotment she received effective November 1, 2013 was not sufficient.

By November 2013, Petitioner was receiving \$363.00 per week in unemployment insurance benefits. Thus, her monthly income is calculated as follows:

$$\$363 \text{ per week} \times 4.3 \text{ average weeks per month} = \$1560.90 \text{ average monthly income}$$

Applying the applicable deductions to Petitioner’s income we have the following net income calculation, effective November 1, 2013:

Gross Income	\$1560.90	Rent	\$1000.00
No Earned Income Deduction		HSU	\$450.00
Standard Deduction	-\$152.00	50% Net income	-\$704.45
No Medical Expenses exceeding \$35			
No Dependent Care Expenses			
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Net Income	\$1408.90	Excess Shelter Expense	\$745.55, but the maximum allowed is \$478.00
Excess Shelter Expense	-\$478.00		
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Net Income	\$930.90		

Effective November 1, 2013, individuals, in a household of one, with a net income of \$930.90 qualify for a FoodShare allotment of \$15.00 per month. As of October 1, 2013, when the agency initially budgeted Petitioner's income, households with her income qualified for a FoodShare allotment of \$16.00 per month. *FSH §8.1.2.*

Petitioner stated that given her high rent, she cannot afford food. There is a list of food pantries that can be found at http://www.needhelppayingbills.com/html/milwaukee_food_pantries.html and at <http://www.foodpantries.org/ci/wi-milwaukee>. In addition, Petitioner might receive additional information from Hunger Task Force: (414) 777-0483 or Feeding America (Formerly Second Harvest): (414) 931-7400.

CONCLUSIONS OF LAW

THEREFORE, it is

ORDERED

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 25th day of November, 2013

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, 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 November 25, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability