



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/152435

PRELIMINARY RECITALS

Pursuant to a petition filed September 30, 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 October 31, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether 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: Lashun Johnson
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 filed this hearing request to contest a reduction in the amount of FoodShare benefits. Petitioner's benefits were \$369.00 per month but were reduced to \$120.00 effective October 1, 2013 but then, after further review, ultimately reduced to \$63.00 a month effective October 1, 2013.
3. The reason for the reduction of Petitioner's FoodShare benefits is that Petitioner submitted a six month report form and the income shown on the form had increased.

4. Petitioner and her husband are employed. The income amounts used by the agency in determining the \$63.00 FoodShare allotment for October 2013 were as follows: for Petitioner wages at 14.93 hours per week at \$7.87 per hour and for her husband 65.5 hours bi-weekly at \$12.50 per hour. Unemployment was also being received; though the agency initially budgeted it at \$57.50 per week it then concluded that it was \$31.00 per week. The agency determined total household gross income to be \$2245.76.
5. Petitioner's household size is three.
6. In determining the amount of Petitioner's FoodShare allotment the agency credited Petitioner with the following deductions from income: a standard deduction of \$152, a 20% earned income deduction, a shelter deduction of \$299.34 based upon a rent expense of \$675 and the utility allowance of \$450.00.

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.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.* For earned income that is received biweekly, the agency is directed to develop a biweekly average, and then multiply that figure by 2.15 to account for three-paycheck months. For weekly income, the multiplier is 4.3. *7 CFR §273.10(c)(2).*

Once a household passes the gross income test the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$152 per month for a household of 1-3 persons, *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 utility allowance is a standard and is \$450.00 per month and 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 \$478.00 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.*

Changes reported in one month will affect the next month's benefits if the change affects benefits. *FSH, §6.1.3.3.* There have been changes to Petitioner's household income, at least some of which were reported in October and these may affect November 2013 FoodShare benefits.

Finally, in terms of regulatory matters relevant here, I also note that where income fluctuates the agency may use income received over a certification period instead of 30 days of income. *FSH, §1.2.4.2.*

I have reviewed the agency calculations here, see Exhibit # 7, and cannot duplicate the agency income figures. It does seem that benefits were correctly reduced but whether or not the amount of the reduction is accurate is not clear. Further, it does not appear to have provided documentation of the unemployment income in the electronic exhibit submissions. I am, therefore, remanding this case to the agency with instructions to redetermine Petitioner's FoodShare for October 2013. And, I respectfully suggest that the agency provide a manual notice to Petitioner detailing the income determinations

CONCLUSIONS OF LAW

That the evidence made available by the agency is not sufficient to demonstrate that it correctly determined Petitioner's FoodShare for October 2013.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to redetermine Petitioner's FoodShare allotment for October 2013 by confirming and detailing its calculation of Petitioner's household income. Petitioner must be notified of the new determination in writing and may appeal the new determination. This must be done within 10 days of the date of this Decision.

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

\sDavid D. Fleming
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