



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152690

PRELIMINARY RECITALS

Pursuant to a petition filed October 10, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services (MES) in regard to FoodShare benefits (FS), a telephonic hearing was held on November 06, 2013, at Milwaukee, Wisconsin. At the request of the parties, the record was held open until November 13, 2013 for petitioner to submit a copy of any outstanding medical bills to apply as excess medical deduction; and b) by November 23, 2013, the county agency would re-calculate the petitioner's FS benefits based upon applying any appropriate excess medical deduction and send a new notice to petitioner. DHA has not received the petitioner's submission by November 13, 2013 nor MES' submission by November 23, 2013.

The issue for determination is whether there is sufficient reliable evidence in the hearing record to determine whether Milwaukee Enrollment Services correctly and accurately reduced the petitioner's FoodShare benefits for the months of October and November, 2013.

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, Room 651
Madison, Wisconsin 53703

By: Pang Thao-Xiong, IM advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resides with her husband, [REDACTED].
2. Petitioner's husband receives monthly Social Security benefits of \$878.
3. The petitioner received FoodShare (FS) benefits of \$367 for her household of two based solely upon her husband's unearned income.
4. The petitioner was approved for SSDI, and received her first payment of \$965 in SSDI on October 3, 2013.
5. Milwaukee Enrollment Services (MES) sent a September 16, 2013 Notice of Decision to the petitioner stating that her FS would be reduced from \$367 to \$20 effective October, 2013, due to an increase in household income (petitioner's new SSDI income).
6. There is insufficient reliable evidence in the hearing record to determine whether Milwaukee Enrollment Services correctly calculated and issued FoodShare (FS) benefits to the petitioner for the months of October and November, 2013. See above Preliminary Recitals.

DISCUSSION

Milwaukee Enrollment Services (MES) has the burden of proof to establish a prima facie case that it correctly and accurately calculated petitioner's FS benefits for the months of October and November, 2013. There is simply not enough reliable, non-hearsay testimony or documentation in the hearing record to determine whether the county correctly or accurately issued FS benefits to the petitioner for the months of October and November, 2013.

During the November 6, 2013 hearing, petitioner testified that she did not receive her first SSDI check until October 3, 2013. The county agency was unable to refute that testimony with any reliable evidence. As a result, petitioner's SSDI income does not affect her October, 2013 FS benefits, but instead is counted as unearned in determining her November, 2013 FS benefits. In addition, neither party submitted reliable evidence to DHA to determine whether petitioner timely submitted her outstanding medical bills to MES, and whether MES accurately re-determined petitioner's benefits as of October 1, 2013 (without petitioner's SSDI) and with any appropriate excess medical deduction as of November, 2013. Accordingly, I conclude that there is insufficient reliable evidence in the hearing record to determine whether the county agency correctly calculated and issued FS to the petitioner for the months of October and November, 2013.

CONCLUSIONS OF LAW

There is insufficient reliable evidence in the hearing record to determine whether Milwaukee Enrollment Services (MES) correctly calculated and issued FS benefits to the petitioner for the months of October and November, 2013.

THEREFORE, it is

ORDERED

The matter is remanded to the Milwaukee Enrollment Services with instructions to: a) re-determine petitioner's FS benefits for the months of October and November, 2013 as explained above; and b) issue a new notice of decision which explains in detail the county's re-determination of petitioner's FS benefits for the months of October and November, 2013, 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, Room 651, 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 5th day of December, 2013

\sGary M. Wolkstein
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 December 5, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability