



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/153540

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 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 December 05, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner’s appeal is timely and, if so, whether the agency properly reduced her FS benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Yia Xiong

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner’s FS group size is 5 and includes her daughter 
3. On February 16, 2013, the agency’s system auto-updated  SSI income of \$83.78 and \$588.40.

4. Petitioner had monthly unearned income of \$608 from W-2 from January 31, 2013 – October 31, 2013.
5. Petitioner's FS benefits of \$736 for March, 2013 were based on Petitioner's W-2 income. [REDACTED] SSI was not included because it was updated in late February. When it was updated for April, 2013, Petitioner's monthly household income was calculated as \$1,280.18 (W-2 income of \$608, \$83.78 state SSI and \$588.40 federal SSI). Based on the increase in income, Petitioner's FS benefits were calculated as \$465/month.
6. On February 25, 2013, the agency issued a Notice of Decision to the Petitioner at [REDACTED] [REDACTED] informing her that her FS benefits would decrease effective April 1, 2013 to \$465/month. The notice also informed the Petitioner of her right to appeal the agency's determination by filing an appeal with the Division of Hearings and Appeals on or before July 1, 2013.
7. On April 10, 2013, Petitioner reported a change in address to the agency. She also reported a rent expense of \$795/month.
8. On April 24, 2013, the agency processed the Petitioner's Six Month Report Form (SMRF). The agency worker erred in coding [REDACTED] as living out of the home. As a result, [REDACTED] income was not included in determining FS benefits and Petitioner's household size was reduced to 4. On April 25, 2013, the agency issued a Notice of Decision to the Petitioner at [REDACTED] [REDACTED] informing her that her FS benefits would be \$668/month for 4 household members effective May 1, 2013. It also informed her that [REDACTED] was not enrolled in FS because she is not living in the home. The notice informed the Petitioner of her right to appeal the agency's determination by filing an appeal with the Division of Hearings and Appeals on or before July 31, 2013.
9. On October 31, 2013, the agency processed Petitioner's SMRF. The agency discovered the error with regard to [REDACTED] living arrangement. The agency corrected the error and calculated Petitioner's FS benefits based on [REDACTED] SSI income and Petitioner's W-2 income. In addition, Petitioner reported a decrease in rent expense from \$795 to \$700.
10. On November 1, 2013, the agency issued a Notice of Decision to the Petitioner at [REDACTED] [REDACTED] informing the Petitioner that her FS benefits would be \$604/month effective November 1, 2013 for a household of five. The calculation was based on gross monthly household income of \$1,280.18 (W-2 income of \$608, \$83.78 state SSI and \$588.40 federal SSI) and rent expense of \$700/month.
11. On November 18, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

In determining the amount of FS to be issued each month, the agency must budget all of a recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which was \$187 per month for a five-person household during the period applicable herein. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin Handbook (FSH) § 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); FSH § 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); FSH § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH § 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); FSH § 4.6.7.

The Petitioner testified that she is appealing the agency's determination regarding her FS allotment for April 1, 2013 as well as the determination for November 1, 2013.

With regard to the April 1, 2013 reduction in benefits, I conclude the Petitioner's appeal is not timely and I therefore have no jurisdiction to rule on the merits of that action. The notice was sent to the proper address for the Petitioner. She did move in April and reported the change in address to the agency. However, the notice in question was sent on February 25 to the Petitioner's correct address. As dicta, though I cannot rule on the merits, I note that I reviewed the agency's budget screen and found no errors in its calculations of FS benefits effective April 1, 2013.

With regard to the notice mailed to the Petitioner on April 25, 2013, I conclude the Petitioner's appeal is not timely and I therefore have no jurisdiction to rule on the merits of that action. The Petitioner testified that she did not receive this notice informing her that the agency was increasing her benefits but that ■ was not part of the FS group. The notice was mailed by the agency to the Petitioner's correct address. The Petitioner presented no evidence as to why the notice would not have been properly delivered and the agency indicated the notice was not returned as undeliverable. As dicta, though I cannot rule on the merits, the agency conceded that there was an error and subsequently corrected it. The Petitioner received more benefits than she would have if ■ was part of the FS group so the issue of whether the agency correctly determined benefits is already conceded. There is, therefore, no issue remaining for determination at this time with regard to the proper allotment.

Regarding the October 31, 2013 notice and action in decreasing the Petitioner's FS benefits effective November 1, 2013, the Petitioner's appeal is timely. The Petitioner's benefits decreased for two reasons: ■ and her income were added back to the Petitioner's case and the expiration of the FS benefit increase that resulted from the adoption of the federal American Recovery and Reinvestment Act (ARRA) of 2009.

The federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5, section 101) included an appropriation for an across-the-board increase in FoodShare allotments of 13.6% as an economic stimulus measure. The appropriation increase was limited as to time and a rule formulation involving the "thrifty food plan." The federal FS statute, at 7 U.S.C. § 2027, states that the Secretary of the Department of Agriculture shall limit allotments so that they "are not in excess of the appropriation for ...[the fiscal year]." When the Secretary determines that the participants' allotments will exceed the appropriation, the Secretary must direct the states to reduce allotments to align with the appropriation. See, in accord, federal code at 7 C.F.R. § 273.10(e)(4). The Secretary has made that determination, and has announced that the 13.6% increase must expire effective October 31, 2013. That declaration is reflected in a U.S. Department of Agriculture memo, "SNAP – Fiscal Year 2014 Cost-of-Living Adjustments and ARRA Sunset Impact on Allotments," issued August 1, 2013, available online at http://www.fns.usda.gov/snap/rules/Memo/2013/FY_2014_COLA_memo.pdf. See, in accord, BEPS/DFS Operations Memo, #13-27, September 9, 2013.

I reviewed the agency's calculation of Petitioner's gross household income and the deductions applied. The agency properly determined the Petitioner's FS allotment effective November 1, 2013. With regard to the reduction as a result of the expiration of the ARRA, the Secretary's action is controlling, and there is no legal authority for deviating from Secretary's decision setting the new allotment maximums.

CONCLUSIONS OF LAW

The Petitioner's appeal is not timely with regard to the agency actions effective April 1, 2013 and May 1, 2013. Regarding the November 1, 2013 action, the Petitioner's appeal is timely. The agency properly calculated the Petitioner's FS benefits effective November 1, 2013.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, 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

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 Milwaukee,
Wisconsin, this 13th day of January, 2014

\sDebra Bursinger
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 January 13, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability