



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/153697

PRELIMINARY RECITALS

Pursuant to a petition filed November 26, 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 January 21, 2014, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's FoodShare benefits were correctly discontinued effective December 1, 2013 and whether her allotment has been correctly determined.

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: Yia Xiong

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
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 was sent a notice dated December 2, 2013 that informed her that her FoodShare benefit would be discontinued effective December 1, 2013 because of income in excess of FoodShare income limits.

3. Petitioner's household size is 1 and she has been categorically eligible for FoodShare. Per records submitted by the agency Petitioner is 77 years of age.
4. The agency had been budgeting \$1269.90 in Social Security income per month for Petitioner. This was net of any Medicaid premiums. She was also working and the agency was budgeting \$549.91 per month in wages. Petitioner's job ended and her last paycheck for December 2013 was to be \$640.00. At that same time the agency began budgeting Petitioner's gross Social Security income of \$1374.00. The combined income for December 2013 was, then \$2014. At the time of the December determinations the agency also changed Petitioner from categorically to non-categorically eligible for FoodShare and concluded she was over the \$1916 income limit.
5. Per the December 2, 2013 notice Petitioner was again noted to be eligible for FoodShare for January 2014.

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*. Elderly is defined for FoodShare purposes as a person over age 60. *FSH, §3.8.1.1*.

There are problems with this case that require that the agency reevaluate the case. Here there seems to be a problem with categorical/non-categorical classification of Petitioner. She is 77 and should be categorical eligible for FoodShare. The notice indicating the December 2013 discontinuance was not a timely notice. *See, e.g., FSH, § 6.3.1*. Finally, Petitioner has potential medical expenses that could be a deduction from income. This includes Medicaid premiums and health insurance premiums. It is not clear when the agency was aware of those. It would seem that the Social Security premiums for Medicaid parts A, B and D might have been known via cross matches. If the agency was aware of those expenses in the past it may have to redetermine past benefits including those expenses because errors can be corrected for the twelve months preceding the discovery of the error. *FSH, §7.4.1.1*. Petitioner had submitted some expense information to the DHA prior to the hearing and it is forwarded to the agency via fax to [REDACTED] as of the date of this Decision.

After reevaluation, the agency should send Petitioner another notice indicating its findings. A manual notice might be more appropriate than a computer generated notice.

Finally, for future reference Petitioner might keep in mind that changes reported in one month will affect the next month's benefits if the reported change has an effect. *FSH, §6.1.3.3*.

CONCLUSIONS OF LAW

That the available evidence is not sufficient to demonstrate that Petitioner's FoodShare allotment for December 2013 was correctly discontinued.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to redetermine Petitioner's FoodShare eligibility for December 2013 and to determine when it became aware of Petitioner's medical expenses and adjust her allotments if necessary. A new notice must be sent to Petitioner detailing the redetermination. This must be done within 10 days of the date of this Decision.

Petitioner may again appeal if she disagrees with the new determinations.

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 22nd day of January, 2014

\sDavid D. Fleming
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 22, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability