



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

FOO/154241

PRELIMINARY RECITALS

Pursuant to a petition filed December 18, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services ["MiLES"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on March 4, 2014. At petitioner's request Hearings scheduled for February 4, 2014 and January 14, 2014 were rescheduled.

The issue for determination is whether petitioner's monthly FS allotment was correctly reduced effective November 1, 2013 and again effective January 1, 2014.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Jose Silvestre, Income Maintenance ["IM"] Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County, Wisconsin.

2. Effective April 1, 2009 the *American Recovery and Reinvestment Act* ["ARRA"] increased monthly FS allotments; the ARRA FS allotment increase expired effective November 1, 2013 and FS allotments were reduced; the ARRA reduced FS allotments nationally for the entire United States effective November 1, 2013.
3. Petitioner's monthly FS allotment was reduced from \$90 to \$79 effective November 1, 2013 due to the ARRA.
4. On January 1, 2014 petitioner's monthly income from Social Security increased from \$801 to \$813; this caused her monthly FS allotment to decrease from \$79 to \$73 effective January 1, 2014.

DISCUSSION

NOVEMBER 1, 2013 FS REDUCTION

The federal *American Recovery and Reinvestment Act* of 2009 (P.L. 111-5, section 101) ["ARRA"] included an appropriation for an across-the-board increase in FS 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 made that determination and 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, state policy at *BEPS/DFS Operations Memo*, #13-27, September 9, 2013. This caused FS allotments to decrease effective November 1, 2013.

Petitioner does not contest that the state agency has correctly calculated her gross income and permissible FS income deductions for November 2013. Rather, she testified that the reduced allotment is inadequate to meet her needs. However, the Secretary's action is controlling, and there is no legal authority for deviating from Secretary's decision setting the new allotment maximums.

JANUARY 1, 2014 FS REDUCTION

When calculating a monthly FS allotment gross income must be used. 7 C.F.R. §§ 273.9(a)(1) & 273.10(c) (2011); *Foodshare Wisconsin Handbook* ["FWH"] 4.3.2. For purposes of FS *income* includes all income from whatever source both earned and unearned. 7 C.F.R. §§ 273.9(b)(1) & (2) (2011); FWH 4.3.1, 4.3.2. & 4.3.4.

Certain specified deductions from gross income are allowed when calculating net income for FS purposes. The only allowed deductions are: standard deduction; earned income deduction; excess medical deduction¹; dependent care deduction; child support deduction; homeless shelter deduction;

¹ The excess medical deduction is only for members of the FS household who are elderly, blind, or disabled. Medical expenses incurred by a member of the FS household who is not elderly, blind, or disabled do not qualify for the excess medical deduction. Further, the excess medical deduction is only for that portion of medical expenses that is in excess of \$35.00 per month. 7 C.F.R. § 273.9(d)(3)intro. (2011); FWH 4.6.4.

excess shelter deduction²; and, standard utility allowance. No other deductions are allowed. 7 C.F.R. § 273.9(d) (2011); FWH 4.6.1.

Petitioner does not dispute that under the law, based on her increased Social Security income, and allowable deductions, she is entitled to only \$73.00 per month in FS effective January 1, 2014. Instead, she testified that she needs more FS to buy healthy food. Petitioner's testimony was sincere -- but FS allotments must be determined by law as detailed above.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's monthly FS allotment was correctly reduced effective November 1, 2013 and again effective January 1, 2014.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

² Shelter expenses include rent/mortgage/condo fees, property taxes, utilities (with some limitations), and insurance. 7 C.F.R. § 273.9(d)(6)(ii) (2011); FWH 4.6.7.1. When calculating utilities the actual amount paid for utilities is not used; instead, a Standard Utility Allowance ["SUA"] is used. 7 C.F.R. § 273.9(d)(6)(iii) (2011); FWH 4.6.7.3. In order for a person to qualify for an excess shelter deduction that person's shelter expenses must be in excess of 50% of their income after all other deductions are allowed. 7 C.F.R. § 273.9(d)(6)(ii) (2011); FWH 4.6.7.1.

this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of March, 2014

\sSean P. Maloney
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 March 18, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability