



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/157601

PRELIMINARY RECITALS

Pursuant to a petition filed May 12, 2014, 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 June 10, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly reduced the Petitioner's FS benefits effective June 1, 2014.

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: Jose Sylvestre
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 # [redacted]) is a resident of Milwaukee County.
2. On April 14, 2014, the agency issued a reminder letter to the Petitioner that her renewal for FS benefits must be completed by May 31, 2014.

3. On April 18, 2014, changes were made to the FS policy regarding utility allowances. The changes are to be applied for all FS renewals processed on or after April 28, 2014.
4. On April 18, 2014, the Petitioner's son contacted the agency for the Petitioner's renewal. The Petitioner's son was unable to supply all required information at that time so the renewal was not completed.
5. On May 2, 2014, the agency issued a Notice of Proof Needed requesting verification of Petitioner's pension/retirement assets. The due date for the requested verification was May 12, 2014.
6. On May 6, 2014, the agency received the verification of assets.
7. Petitioner has pension/retirement income of \$42.89/month and Social Security income of \$760/month. She has excess medical bills of \$70.40/month. Her rent is \$417.50/month, heat included. Petitioner's phone expense is \$175.38/year (\$14.62/month). Petitioner's electric bill is \$383.20/year (\$31.93/month).
8. On May 7, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be \$99/month effective June 1, 2014.
9. Petitioner resides with her son. Household expenses are split evenly between Petitioner and her son. Petitioner and her son do not purchase food together or prepare meals together.
10. On May 12, 2014, 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 the recipient's nonexempt income, including earned and unearned income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$152 per month for a one-person household. 7 C.F.R. §273.9(d)(1); FoodShare 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.

On April 28, 2014, a new policy regarding utility standards to be applied as deductions in determining FS allotments became effective. Households that do not receive WHEAP payments will receive a utility standard based on utility obligations incurred by the household at the current residence. Persons who are obligated to pay two or more of any non-heat qualifying utility expenses (including phone, water, sewer, electric, cooking fuel or trash) will receive a limited utility allowance of \$313/month. See DHS Ops-Memo 14-16 (April 28, 2014).

In this case, the Petitioner does not dispute her gross monthly income. She does not dispute that her rent expense is \$417.50/month which includes heat. She did dispute the medical expenses that were counted by the agency as well as her electric expense and phone expense. She presented bills in support of her expenses as stated in Finding of Fact #7 above. The agency calculated slightly lower phone, electric and medical expenses when it determined her FS benefits effective June 1, 2014. While the expenses calculated by the agency were based on bills submitted by the Petitioner at the time, the Petitioner's submission of bills indicates that her monthly expenses are slightly more than indicated by those bills. Therefore, while the FS benefits for June, 2014 are properly calculated based on the information available to the agency at that time, the agency should re-calculate FS benefits based on the information submitted by the Petitioner at the hearing as noted in Finding of Fact #7 to affect July, 2014 benefits.

The primary reason for the reduction in Petitioner's FS benefits is the result of a change in policy relating to the utility standard deduction. I conclude, based on the evidence, that the agency has properly concluded the Petitioner is entitled to a limited utility allowance of \$313 based on having an electric utility expense and phone expense each month.

### **CONCLUSIONS OF LAW**

The agency properly determined Petitioner's FS benefits for June, 2014. The agency properly determined that the Petitioner is entitled to a limited utility allowance for her electric and phone expenses. The agency must re-calculate benefits for July, 2014 based on the information submitted by the Petitioner at the hearing.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency to re-calculate Petitioner's FS benefits effective July 1, 2014 and forward based on her expenses as indicated in Finding of Fact #7 above. The agency shall issue a new Notice of Decision to the Petitioner informing her of the agency's determination regarding her benefits. These actions shall be taken 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 Milwaukee,  
Wisconsin, this 27th day of June, 2014

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\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 June 27, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability