



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/158573

PRELIMINARY RECITALS

Pursuant to a petition filed June 26, 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 August 13, 2014, by telephone. A hearing set for July 16, 2014, was rescheduled at the petitioner's request.

The issues for determination are (1) whether the petitioner's hearing request was timely regarding FS eligibility prior to March 2014, and (2) whether the agency correctly determined the petitioner's March 2014 FS allotment.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Simone Johnson, IM Spec. - Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The petitioner has an ongoing FS case as a household of one person. She applied for FS on March 26, 2014. She asserted that she has gross monthly income of zero.

3. On March 22, 2014, the Department issued written notice to the petitioner advising that her FS would be \$36 for March 26-31, 2014. The basis for reduction was the proration of benefits from the date of application. Exhibit 3. The notice also advised that the petitioner would receive the maximum allotment for one person of \$189 for April 2014 onward. The petitioner timely appealed by the date identified in the notice.
4. The petitioner has a shelter expense of zero, plus utilities. She does not pay out child support, and does not incur a dependent care expense to go to work.
5. The petitioner previously applied and was found eligible for BadgerCare Plus health insurance on May 17, 2011, May 7, 2012, and April 25, 2013. Per the case application summary documents that she signed off on, she did not ask for FS on any of those applications.

DISCUSSION

The petitioner asserts that she is now appealing the denial of her requests for FS from an unknown date in May 2004 through 2013. A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within **90 days** of the date of that action. 7 C.F.R., § 273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed more than 90 days after the date of the alleged actions. Thus, it was untimely, and no jurisdiction exists for considering the merits of any actions prior to the March 26, **2014** application. The Department's records indicate that the petitioner did not apply for FS prior to March 26, 2014.

The petitioner also questions the correctness of the calculation of the FS allotment amount for March 2014, onward. The gross income was an undisputed zero. The budgeting calculations here were performed prospectively. Prospective budgeting should reflect what the petitioner is likely to receive, on average, each month. *FS Wisconsin Handbook (FSWH)*, 4.1.1, viewable online at www.emhandbooks.wisconsin.gov/fsh/.

In calculating the petitioner's March allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county start with gross, rather than net, income, and allow only a limited number of identified deductions from that income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a case with one to three persons is currently set at \$152, per *FS Wisconsin Handbook*, 8.1.3. Twenty percent of any earned income is then subtracted as the Earned Income Deduction; that deduction was correctly not given here. A Dependent Care Deduction is also taken if the petitioner incurred day care expenses in order to go to work, an Excess Medical Expense Deduction is subtracted for an elderly or disabled person's allowable medical expenses that exceed \$35 per month, and child support paid out garners a deduction. There is no record of the latter three expenses here. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of that income. 7 C.F.R. §273.9(d)(6)(ii). Based on a zero shelter cost plus the \$450 heating utility standard, the petitioner's shelter costs totaled \$450. This did exceed half of the adjusted income (zero), so the maximum excess shelter cost of \$450 was deducted in the allotment calculation.

Thus, the March 2014 allotment calculation correctly looked like this:

Gross income	0000.00
Minus Earned Inc. Deduction	- 000.00
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00

Minus Standard Deduction	<u>-152.00</u>
Adjusted Income	000.00
Minus Shelter Deduction	<u>-450.00</u>
Net Income	000.00

The correct allotment for one person with net income of zero was \$189 in April 2014. *FS Wisconsin Handbook*, 8.1.2, p.1. However, the petitioner did not file her application until March 26, 2014, so the \$189 allotment was prorated to reflect the number of days remaining in the month. The result was a prorated allotment of \$36.00 for March 2014.

CONCLUSIONS OF LAW

1. The petitioner’s appeal is untimely with respect to FS denials before March 26, 2014.
2. The Department correctly determined the petitioner’s prorated FS allotment of \$36 for March 2014.

THEREFORE, it is

ORDERED

That the petition is 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 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 September, 2014

\sNancy J. Gagnon
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 September 18, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability