



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159052

PRELIMINARY RECITALS

Pursuant to a petition filed July 16, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on August 12, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner's FS effective August 1, 2014.

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: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On June 18, 2014 petitioner had a review for FS.

3. From that review, the agency determined that petitioner has a monthly utility bill of \$313, gross monthly income of \$1238.90 in SSRE, and gross monthly income of \$170.08 from Hobby Income.
4. On July 7, 2014 the agency issued a notice of decision to petitioner stating that her FS would be \$6 effective August 1, 2014.

DISCUSSION

FS benefits are calculated pursuant to 7 C.F.R. §273.9. The maximum FS allotment amounts, based on household size, are listed at *FoodShare Wisconsin Handbook*, §8.1.2. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

In calculating the petitioner's allotment, the agency must follow the procedure set by the federal FS regulations, which is restated in the *FS Handbook*. In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. § 273.9(b). From the gross household income, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6.1 are allowed: a standard deduction, an earned income deduction, a medical expenses deduction, a child support payment deduction, a dependent care expense deduction, and a shelter expense deduction. Some FS groups are not allowed a deduction for some expenses and some expenses are not always deducted in full.

The first reason that petitioner's FS decreased in August was due to a change in the federal FS policy per the 2014 Farm Bill, also known as The Agricultural Act of 2014 (P.L. 113-79). Petitioner can check this information at http://www.fns.usda.gov/sites/default/files/LIHEAP_Implementation_Memo.pdf. The policy in question is also reiterated in Operations Memo #14-16, available online at <http://www.dhs.wisconsin.gov/em/ops-memos/2014/PDF/14-16amended2.pdf>; see also Exhibit 7. Of particular relevance here, it states, "Households who do not receive WHEAP will be granted the appropriate utility allowance based on utility obligations. This change is to be applied for all FS applications with a filing date on or after April 28, 2014 and FS renewals processed on or after April 28, 2014 for a recertification period starting June 1, 2014." Petitioner did not dispute her utility obligation, but I provide this information to her so that she may understand that change in deduction. I find no evidence to disturb the agency's determination here.

The second reason petitioner's FS decreased in August was due to an overpayment which was being recouped through her current FS allotment. That recoupment/overpayment issue is decided in petitioner's companion case, DHA Decision #FOP/159050. I find no evidence to disturb the agency's determination here.

The third reason petitioner's FS decreased in August was because her medical expenses decreased. As stated above, one of the allowable deductions to count against income is for medical expenses. The amount of the monthly expenses used to determine these deductions is determined prospectively using the best verified information available. If the food unit fails to report or verify an expense, the deduction is not allowed. *FoodShare Handbook*, §4.6.1. The medical expense deduction is determined using verified allowable monthly medical expenses incurred by elderly, blind, or disabled FS group members exceeding \$35 per month. *FS Handbook*, §4.6.4. Further the policy states:

Allow previously acquired charges (not yet paid) and current payments when calculating a medical expense deduction. Previously acquired charges include charges incurred any time before or during the certification period, as long as the individual is still obligated to pay the expense and the incurred expense has not been previously allowed as a FS deduction.

Past unpaid medical bills can be used to prospectively budget recurring medical expenses at application or recertification.

One time medical expenses (i.e. hospital bills) can be budgeted for one month or averaged over the remaining certification period.

Medical expense payments made during the certification period are allowable. Medical expenses paid prior to the certification period are not allowable.

Example 1: Jack has surgery in January and receives a hospital bill for \$400 in February. Jack then applies and becomes eligible for FS in April. At the time of application, Jack has not made any payments toward the medical bill. The [ESS](#)  can use the entire \$400 hospital bill when calculating Jack's medical expense deduction.

Example 2: Jack has surgery in January and receives a hospital bill for \$400 in February. He makes his first \$50 monthly payment toward his medical bill in March. Jack then applies and becomes eligible for FS in April. The ESS cannot use the \$50 March payment when calculating the medical expense deduction. The worker can, however, use the remaining \$350 of the hospital bill ($\$400 - \$50 = \$350$) to calculate the deduction.

Allowable medical expenses are:

1. Medical and dental care including psychotherapy and rehabilitation services provided by a state licensed practitioner or other qualified health professionals, including chiropractors and acupuncturists.
2. Hospitalization or outpatient treatment, nursing and nursing home care. This includes payments by the FS group for a person who was a FS group member immediately before entering a state recognized hospital or nursing home.
3. Prescription drugs when prescribed by a licensed medical practitioner authorized under state law. This includes the cost of postage for mail-order prescription drugs.
4. Over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional.
5. Sickroom equipment (including rental), or other pre-scribed equipment, and medical supplies.
6. Health and hospitalization insurance premiums, including Medicare premiums. Nursing home care insurance policies are deductible only if the policy states that the benefits are intended to pay medical bills - then it is reasonable to conclude that the household member intends to use the benefits for paying medical bills rather than normal living expenses.

Only allow the premium of the elderly, disabled, or blind food unit member. For example, a mother pays \$165 for herself and her disabled son. If she only covered herself the payment would be \$100, therefore \$65 is the expense for the *child* . Count the \$65 as an allowed medical expense.

In the absence of specific information on how much of a premium is for the eligible food unit member, prorate the premium and allow the [EBD](#)  member's portion of the premium as the expense.

7. Dentures, hearing aids, and prosthetics.
8. Purchase and maintenance costs of any animal specifically trained to perform some function that the member cannot readily perform or help compensate for a physical

condition, to serve the needs of disabled program participants, including the cost of food and veterinarian care. This includes companion dogs for persons with mental illnesses recommended by a licensed practitioner. The trainer does not need to have any special credentials and can be the person claiming the deduction as long as the animal is trained to do a specific function the owner cannot do for themselves.

Reimbursement for these expenses is an allowable deduction if:

1.
 - a. It does not exceed the actual expense.
 - b. It does not represent a gain or benefit to the household as do normal living expenses such as rent or mortgage, personal clothing or food eaten in the home.
 - c. It is provided specifically for an identified expense.
 - d. It is used for the purpose intended.
9. Eye glasses and contact lenses prescribed by an ophthalmologist or optometrist.
10. Reasonable cost of transportation and lodging to obtain medical care. For transportation, allow:
 - a. The actual cost of the public carrier; or,
 - b. If a private vehicle, the lesser of the mileage rate paid by the county or by the state for unrepresented state employees. See <http://www.dhfs.state.wi.us/bfs/pdf/APP/Travel/trav10.pdf> to obtain the current state rates.
11. Charges for an attendant, homemaker, home health aide, child care, or housekeeper necessary due to age, infirmity or illness.
Treat attendant care costs that qualify either as a medical or dependent care deduction as a medical deduction. Deduct an amount equal to the 1 person allotment if the household furnishes the majority of the attendant's meals. Use the allotment in effect the last time eligibility was determined. You must update the amount at the next scheduled review but may do so earlier.
12. Any cost-sharing, co-payment, or [MA](#)  deductible expense incurred by an MA recipient, including MA deductible pre-payments.
13. Payments made on a loan's principal if it was used to pay a one-time medical expense. Do not allow loan expenses, such as interest.
14. BadgerCare and Medicaid Purchase Plan (MAPP) premiums.
15. The SeniorCare enrollment fee.
16. Lifeline / MedicAlert. The costs of Lifeline or MedicAlert devices used by persons to contact medical help in emergencies are an allowable medical expense deduction for FoodShare benefits if prescribed by a licensed practitioner or other qualified health professional.
17. Medical expenses billed on a charge card are allowable. The interest cannot be included as a deduction.

4.6.4.2 Medical Expenses Not Allowed

Do not allow:

1. Expenses paid by or that will be paid by insurance.
2. Expenses paid by or to be paid by any governmental program, including MA and Medicare.
3. Costs of health and accident policies such as: any payable in lump sum settlements for dismemberment or death, or income maintenance policies covering mortgage or loan payments while the beneficiary is disabled.
4. Loan repayments for anything other than the loan's principal.
5. Premiums for nursing home insurance policies that would not be used to cover allowed medical expenses.

6. Lying in costs for the birth of a child.
7. Special diets whether or not the diet is related to a medical condition.
8. Prescribed medical marijuana.

See *FS Handbook*, §4.6.4.1.

Here, the petitioner argues that she provided more expenses to the agency than that which was counted for her deduction. Post-hearing the agency and petitioner were to provide me with a copy of the information she provided to the agency for her June 2014 review regarding medical expenses. This occurred. The agency has explained and shown how it counted her expenses. It also explained how some of the claimed expenses (Lifeforce and Nutrition) were not counted in the total deduction as either the incurred expense was previously allowed as a FS deduction in the previous certification period, or the expenses submitted were not for incurred charges but rather a payment history. The petitioner has provided some information which is different than the agency's, but only in that the dates of the invoices have changed (presumably printed on 8/13/14 causing a date change in the invoice), however that information does not change the situation in that they still appear to be either previously allowed as a FS deduction in the previous certification period, or the expenses submitted were not for incurred charges but rather a payment history. I find no evidence to disturb the agency's determination here.

I add for petitioner's information that the medical expense deduction is allowed for *incurred* expenses, and therefore any *possible* expenses are not considered for FS purposes. I cannot therefore determine whether or not a dental expense that has not been incurred should be included as a deduction. Petitioner can always submit any medical expenses to the agency as they are incurred so that her FS can be redetermined so long as they were not previously allowed as a FS deduction.

The last issue relates to the determination of petitioner's income. Petitioner was unable to show that the amount determined for her SSRE was inaccurate. However, with respect to the "Hobby Income", I cannot tell if this amount was determined correctly by the agency. Petitioner submitted post-hearing a Schedule A for Itemized Deductions, however, I cannot tell if this document was filed as she says it was with the IRS. The document does not show that this was submitted to the agency either. However, the evidence is also lacking as to what the agency requested of petitioner on this income. As such, I will remand *on this issue only* so that the agency can properly request the required documentation to verify the "Hobby Income." The petitioner must provide the requested information, within the required timeframe, to the agency, so that this income can be properly determined. I understand that she believes she provided it already to the agency, but there is no record of that and she has not proved that post-hearing either. Petitioner is reminded therefore to keep fax confirmation sheets, notes, date stamped documents and the like so that she can better keep track of, and provide proof of, what she claims to provide to the agency so that the verification issues she complains of can be remedied.

I further remind the petitioner that if her income decreases or expenses increase, or has other changes to her household, she must report and verify that to the agency so her FS can be redetermined. Assuming petitioner disagrees with my findings (aside from the hobby income), I add for petitioner's information that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. As such, I cannot change policy or law because I find it unfair.

CONCLUSIONS OF LAW

The evidence is insufficient to determine if the agency correctly determined petitioner's Hobby Income as it relates to the FS issued August 1, 2014.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency to (1) request verification of petitioner's Hobby Income, including any amended tax filings, within 10 days of the date of this decision, and if the petitioner provides the requested verification within the required timeline, then the agency shall (2) redetermine petitioner's FS effective August 1, 2014 using the verification of income, (2) issue any FS accordingly, and (3) issue a notice of decision regarding same. Because of the requested verifications, I am adding 20 days to allow the agency time to accomplish that.

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 August, 2014

\sKelly Cochrane
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 August 27, 2014.

Kenosha County Human Service Department
Division of Health Care Access and Accountability