



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

FOO/159135

PRELIMINARY RECITALS

Pursuant to a petition filed July 21, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Portage County Department of Human Services [“County”] in regard to FoodShare benefits [“FS”], a Hearing was held via telephone on August 27, 2014.

The issue for determination is whether it was correct to reduce petitioner’s monthly FS allotment from \$189 to \$69 effective July 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: Tammy Porter, Elderly Services Specialist
Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #  60 years old) is a resident of Portage County, Wisconsin.

2. Prior to July 1, 2014 petitioner was allowed a \$450 Standard Utility Allowance ["SUA"] when calculating her monthly FS allotment; this resulted in a monthly FS allotment of \$189 for petitioner.
3. Petitioner lives in a motel and does not pay any utility expenses.
4. Effective July 1, 2014 petitioner was no longer allowed a \$450 SUA (no SUA was allowed) when calculating her monthly FS allotment; this resulted in a monthly FS allotment of \$69 for petitioner.
5. Petitioner is allowed a \$650 in shelter costs when calculating her monthly FS allotment (but she is not allowed any SUA).

DISCUSSION

The amount of a person's monthly FS allotment depends, in part, on the person's income: in general, the higher the income the lower the allotment. 7 C.F.R. § 273.10 (2014); *FoodShare Wisconsin Handbook* ["FWH"] 4.3.1 & 7.1.1. When calculating an FS allotment gross income must be used. 7 C.F.R. §§ 273.9(a)(1) & 273.10(c) (2014); 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) (2014); 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; excess shelter deduction²; and, Standard Utility Allowance ["SUA"]. No other deductions are allowed. 7 C.F.R. § 273.9(d) (2014); FWH 4.6.1.

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) (2014); FWH 4.6.7.3. However, an FS household can not be allowed an SUA if it does not have any utility expenses. 7 C.F.R. §§ 273.9(d)(6)(ii)(C) and (iii)(C) & (D) (2014);); FWH 4.6.7.3. Thus, petitioner can not be allowed an SUA because she does not have any utility expenses.

Petitioner testified that she is cannot live on \$69 per month of FS. Petitioner's testimony was sincere and understandable -- however, the law as detailed above, must still be followed.

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. 7 C.F.R. § 273.9(d)(3)intro. (2014); FWH 4.6.4. 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. (2014); FWH 4.6.4. Medical expenses for previously acquired charges that have not yet been paid (previously acquired charges include charges incurred anytime 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), as well as current payments, are allowed. Medical expense payments made during the certification period are allowable. However, medical expenses paid prior to the certification period are not allowable. FWH 4.6.4.1.

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) (2014); FWH 4.6.7.1. 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) (2014); FWH 4.6.7.1.

CONCLUSIONS OF LAW

For the reason discussed above, it was correct to reduce petitioner's monthly FS allotment from \$189 to \$69 effective July 1, 2014.

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.

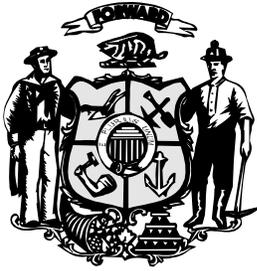
APPEAL TO COURT

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 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 29th day of August, 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 August 29, 2014.

Portage County Department of Human Services
Division of Health Care Access and Accountability