



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159167

PRELIMINARY RECITALS

Pursuant to a petition filed July 21, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Richland County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on August 11, 2014, at Richland Center, Wisconsin.

The issue for determination is whether petitioner is entitled to application of a utility standard in his FS calculation.

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: Stephanie Ronnfeldt
Richland County Health and Human Services
221 W Seminary St.
PO Box 673
Richland Center, WI 53581

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Richland County.
2. Petitioner receives FS as a one-person household. He received \$111 in FS in each month of January through June 2014.

3. Petitioner pay rent to a landlord. The landlord pays utilities.
4. The Department changed its policy toward counting shelter expenses in the FS determination. Previously all FS households received a \$450 utility expense. The policy changed to provide that only expenses actually paid by the household can be counted. As a result of the changes, petitioner's FS decreased to \$30 effective July 2014.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt 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. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 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); FS Handbook, App. 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); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 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); FS Handbook, App. 4.6.7.

Prior to the federal 2014 Farm Bill the Wisconsin Department of Administration issued an annual energy assistance payment of \$1 to all FS households who were not already receiving energy assistance. This policy allowed Wisconsin to grant all FS households the Heating Standard Utility Allowance of \$450. Actual utility usage did not matter.

The 2014 Farm Bill changed this practice. The 2014 Farm Bill requires a household to have received an energy assistance payment of greater than \$20 to receive the \$450 utility standard. 7 U.S.C. 2014(e)(6)(C)(ii)(I). Therefore households that do not receive energy assistance receive the utility standard based on the utility obligation actually incurred by the household. Petitioner did not receive energy assistance and his only monthly utility obligation is his phone.

Petitioner's specific argument relies on language from the DHS memo that states that "[w]hen utility bills are not in a food unit member's name, but the food unit claims responsibility for the bill and the address for the utility bill is the same as the food unit's address, allow the appropriate utility standard." Petitioner's argument is that he gives rent money to his landlord who then uses that money to pay the utility bill. The landlord testified and I am persuaded that she pays a sum in utilities with the use of these funds paid by petitioner. It may be that sometimes the utility bill is less or more than the rent paid. Notably, the next sentence of the memo allows the utility standard to be applied to roommates who share responsibility for the utility bill.

This is a unique case. Petitioner lives under the same roof as the landlord which I find fits this in a category like that of the roommate situation in which the Department clearly allows the benefit to apply. It is not clear to me that the scenario here is the one contemplated in the rule. But, it seems to fit within the strict language and the utility standard benefit should be applied.

CONCLUSIONS OF LAW

The agency should allow the utility standard under these fairly unique circumstances.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with instruction to reverse the action disallowing the utility standard and redetermine the allotment including the utility standard retroactive to July 1, 2014. Any appropriate retroactive supplements shall be issued. These actions must be completed within 10 days.

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 12th day of September, 2014

\sJohn ■ Tedesco
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 12, 2014.

Richland County Health and Human Services
Division of Health Care Access and Accountability