



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

FOO/159476

PRELIMINARY RECITALS

Pursuant to a petition filed July 28, 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 28, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly determined the sufficiency of the petitioner's FS on application.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted name and address]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Jose Silvestre
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner's household size is 2 consisting of Petitioner and his wife.
3. Effective August 1, 2014 Petitioner's monthly FS benefits were reduced from \$347.00 to \$15.00.

4. Petitioner's monthly household gross income is \$1,873.23. \$1,086.20 is from Petitioner's employment as his wife's personal care worker. The remaining \$787.03 is from Petitioner's wife's social security income.
5. Petitioner's monthly rent is \$735.00, and Petitioner is responsible for heat and electric.
6. On July 17, 2014 the agency completed a FS interview with Petitioner. During the interview Petitioner reported income from employment and his wife's social security income. Previously Petitioner was not working. The agency then recalculated Petitioner's FS benefits, and on July 24, 2014 sent Petitioner a notice stating that the household's FS benefits were reduced to \$15.00 per month effective August 1, 2014.
7. On July 31, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing.

DISCUSSION

In calculating the petitioner's FS 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 income, deducting a limited number of identified deductions from that income to calculate the adjusted 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 household size of 2 is \$152, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 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 the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

I have reviewed the agency's calculations in this case. The only issue with the agency's calculations is that the agency deducted the \$313 limited utility allowance instead of the \$450 heating standard utility allowance. The \$450 heating standard utility allowance is available to households actually paying for any heating source. *DHS Operations Memo 14-16 Amended* (viewed online at <http://www.dhs.wisconsin.gov/EM/ops-memos/2014/PDF/14-16amended2.pdf>). In this case Petitioner testified that he is responsible for his heating in that he pays for his gas and electric. The agency agreed that he should have received the \$450 heating utility standard. This change increased Petitioner's FS benefits effective August 1, 2014 from \$15 to \$25.

I note that \$25 in monthly FS benefits is still a significant reduction from the \$347 in monthly FS benefits Petitioner previously received. This reduction is due to an increase in household's gross income. Petitioner previously did not have any income. However, Petitioner began getting paid \$1,086.20 from the IRIS program. Petitioner testified that his wife is disabled and is a part of the IRIS program. IRIS is an acronym for The Include, Respect, I Self-Direct (IRIS) program, which was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. This Section 1915(c) waiver document is available at <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>. IRIS is a fee-for-service, self-directed personal care program. Petitioner testified that he is a personal care worker for his wife, and IRIS pays him for that service. Petitioner believed that the money he received from IRIS is not income from employment and should not be included in determining his monthly FS benefits.

Income for determining FS program eligibility and FS benefits amount is any gain or benefit that can be used to purchase goods and services. *FSWH*, 4.3.1. (viewed online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>). The federal regulations provide that only specified items can be excluded from income. 7 C.F.R. §273.9(c). Some examples include money received from scholarships or fellowships, energy or housing assistance, and more. *Id.* These are very specific carved out exceptions. Money paid through the State's IRIS program is not one of these carved out exceptions. *Id.* Petitioner

testified that he receives these payments because he helps his wife with activities of daily living. This is most similar to employment income in that Petitioner is performing tasks and getting paid for that service. However, without question Petitioner is receiving a benefit, money, which is used to purchase goods and services. Therefore this is income when determining Petitioner's monthly FS benefit amount.

CONCLUSIONS OF LAW

The agency correctly calculated a reduction in Petitioner's monthly FS benefit based upon an increase in Petitioner's income, however, the agency incorrectly used the limited utility allowance instead of the standard heating utility allowance when calculating Petitioner's monthly FS benefits effective August 1.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency to recalculate Petitioner's monthly FS benefits using the standard heating utility allowance. The agency needs to implement this change within ten days 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.

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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 3rd day of September, 2014

\sCorinne Balter
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 3, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability