



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/159645

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 07, 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 27, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (MES) correctly and properly reduced the petitioner's FoodShare (FS) benefits from \$91 to \$15 effective August 1, 2014, due to petitioner no longer having any utility bill to create a FS utility deduction.

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: Jose Silvestre, IMM advanced  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who receives FoodShare (FS) benefits for a household of one.
2. The petitioner receives monthly Social Security totaling \$804.00, as of August, 2014.

3. During his July, 2014 FS review, petitioner informed Milwaukee Enrollment Services (MES) that he no longer pays any heating utility bill.
4. A FS recipient only receives a utility credit deduction when that FS recipient pays for utility bills per Operations Memo 14-16, issued April 18, 2014 (effective 4-28-14). Petitioner's lack of a utility bill resulted in no utility deduction in calculating his FS benefits, as documented by the county's FS budget screens for the petitioner during the relevant months. See Exhibit 1.
5. Milwaukee Enrollment Services (MES) sent an August 1, 2014 Notice of Decision to the petitioner stating that effective **September 1, 2014**, his FS benefits would be reduced from \$91 to \$15 due to no utility bill expense deduction, as explained in Findings of Fact #3 and #4 above. See Exhibits 1 and 2.

### DISCUSSION

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, certain deductions as discussed in the *FoodShare Wisconsin Handbook*, §4.6 are allowed: (1) standard deduction - which currently is \$134 per month for all households. 7 C.F.R. §273.9(d) (1); (2) earned income deduction - which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d) (2); (3) medical expense deduction - for medical expenses exceeding \$35 in a month for an elderly or disabled person. 7 C.F.R. §273.9(d) (3); (4) dependent care deduction for child care expenses. 7 C.F.R. §273.9(d) (4); and **(5) shelter expenses deduction - 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). The maximum FS allotment amounts, based on household size, are listed at *FoodShare Wisconsin Handbook*, §8.1.7. The *Handbook* can be viewed online at <http://www.emhandbooks.wi.gov/fsh/>.

During the August 27, 2014 hearing, the MES representative provided petitioner a detailed explanation regarding the calculation of the reduction in his FS benefits. MES representative, Jose Silvestre documented that due to no longer having a utility expense deduction, his FS benefits decreased but incorrectly alleged that such reduction should be August 1, 2014 and not September 1, 2014. See Findings of Fact #3 - #5 above. The petitioner admitted that he had no utility bill, and was unable to refute the county's case that it had correctly calculated the petitioner's household income and lack of utility deduction for a FS household which thus reduced his FS benefits. However, MES did not provide the legally required 10 days advance notice to the petitioner for a proper and timely reduction in his FS benefits. As a result, MES is correct to reduce the petitioner's FS benefits, but such FS reduction should be effective September 1, 2014, not August 1, 2014. Accordingly, for the above reasons, I conclude that Milwaukee Enrollment Services (MES) correctly reduced the petitioner's FoodShare (FS) benefits from \$91 to \$15 due to no longer having any utility bill to create a FS utility deduction, but such reduction should begin effective September 1, 2014, not August 1, 2014.

### CONCLUSIONS OF LAW

Milwaukee Enrollment Services (MES) correctly reduced the petitioner's FoodShare (FS) benefits from \$91 to \$15 effective September 1, 2014, due to petitioner no longer having any utility bill to create a FS utility deduction, but that reduction should be effective September 1, 2014, not August, 2014.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to Milwaukee Enrollment Services (MES) to: a) correctly reduce the petitioner's FoodShare (FS) benefits from \$91 to \$15 effective September 1, 2014, due to petitioner no longer having any utility bill to create a FS utility deduction, but should not begin that reduction during August, 2014; and b) if MES reduced petitioner's FS as of August, 2014, MES should supplement petitioner's August, 2014 FS benefits, within 10 days of the date of this Decision.

## 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 September, 2014

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\sGary M. Wolkstein  
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 29, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability