



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159856

PRELIMINARY RECITALS

Pursuant to a petition filed August 12, 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 September 09, 2014, at Milwaukee, Wisconsin.

The issues for determination is whether Milwaukee Enrollment Services (the agency) correctly denied the Petitioner's request to backdate an increase in her FoodShare benefits to July and August 2014 and if not, whether the agency correctly determined the Petitioner's benefits for those months.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Representative:



Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Simone Johnson, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The Petitioner's daughter-in-law is Petitioner's authorized representative. (Exhibit 2)
3. On May 29, 2014, the agency processed a renewal for the Petitioner. (Exhibit 3, pg. 2)

4. The Petitioner's daughter-in-law completed the Petitioner's FoodShare interview on June 3, 2014. (Id.)
5. On June 4, 2014, the agency sent the Petitioner a notice that her benefits would be reduced effective July 1, 2014, from \$189.00 to \$112.00. (Exhibit 3, pgs. 12-16)
6. On August 1, 2014, the Petitioner's daughter-in-law contacted the agency and reported that she has a heating expense and an electric expense. (Exhibit 3, pg. 2)
7. The agency determined that effective September 1, 2014, would receive \$189.00 per month in food share benefits. (Exhibit 3, pg. 1)
8. Petitioner's daughter-in-law filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 12, 2014. (Exhibit 1)
9. The Petitioner is over age 60. (Exhibit 3, pg.3)
10. The Petitioner lives with her adult son, but has an assistance group size of one. (Id.)
11. Petitioner's sole source of income is from Social Security Disabled Widow Benefits, in the amount of \$788.00 per month. (Exhibit 3, pg. 8)
12. Petitioner pays \$700 per month in rent. (Exhibit 3, pg. 9)
13. Petitioner pays \$50.00 per month to WE energies, for her share of the gas and electric bill. (Exhibit 4)

### DISCUSSION

#### *The agency may not backdate Petitioner's benefits*

Petitioner's daughter-in-law filed an appeal, because she believes the agency incorrectly determined the Petitioner's FoodShare benefits for July and August 2014.

It is undisputed that if Petitioner's heating expense is taken into consideration and the Heating Standard Utility Allowance applied, that Petitioner's benefits should be \$189.00 per month.

It is the agency's contention that the Petitioner did not accurately report her utility expenses at the time she did her renewal in June 2014. As such, when Petitioner's daughter-in-law contacted the agency on August 1, 2014 and reported a heating expense, it was treated as a change report.

FoodShare Wisconsin Handbook (FSH) §6.1.3.3 states that, "All reported changes that cause an increase in the [FoodShare] benefit...will be effective the first of the month following the report month, if required verifications are received within 10 days of the request." See also 7 CFR §273.12(c)(1) Consequently, the agency made the change effective September 1, 2014.

The Petitioner's daughter-in-law testified that she handled the phone call for Petitioner on June 3, 2014 and that she did try to explain that the Petitioner shared utility expenses, but that the agency worker misunderstood what she said.

The case comments for June 3, 2014 state that Petitioner reported being a household of 1; that she is not enrolled in school, not employed, receiving Social Security Disability income per data exchange, that the Petitioner pays rent; that she was not filing taxes, not a fleeing felon or convicted of a drug felony. However, there is no information in the case comments, one way or another, regarding Petitioner's utilities. Further, the worker who spoke to the Petitioner on June 3, 2014 did not testify at the hearing, regarding the conversation he/she had with Petitioner.

However, the testimony of Petitioner's daughter-in-law is not entirely reliable. At the hearing, it was apparent that her recollection of what she reported and when was not clear. Further, the copy of the cancelled check that she produced to verify Petitioner's utility expense is dated July 8, 2014; is part of a bank statement for the period of July 10, 2014 to August 8, 2014, and appears to have been processed by the bank on August 6, 2014. (See Exhibit 6) As such, the cancelled check does not support the conclusion that Petitioner reported and provided verification of a utility expense incurred in June 2014.

Based upon the foregoing, it is found that Petitioner's daughter-in-law did not timely report and verify the utility expense. The agency correctly determined that the information regarding Petitioner's utility expenses, provided on August 1, 2014, was a change report.

Accordingly, it is found that the Agency correctly applied the change to Petitioner's September 1, 2014 allotment determination and correctly denied the Petitioner's request to backdate the change to July and August 2014.

*The calculation of the July and August 2014 benefits*

Once a household passes the gross income test the following deductions are applied in determining the FoodShare allotment. (FSH, at § 4.6):

- (1) a standard deduction –

This is \$152 per month, 7 CFR § 273.9(d)(1):

- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 CFR § 273.9(d)(2);

Petitioner does not have any earned income, so this would not apply to her.

- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 CFR § 273.9(d)(3);

Petitioner did not report any out of pocket medical expenses.

- (4) dependent care deduction for child care expenses, 7 CFR § 273.9(d)(4); and

Petitioner did not report any child care expenses.

- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 CFR § 273.9(d)(5).

There is a cap on this deduction of \$478 per month, unless the recipient is elderly, blind or disabled, meaning a food unit member age 60 or older or a person who receives disability or blindness benefits from any of these programs: SSA, MA, SSI or SSI related MA, Railroad Retirement Board (RRB ). FSH, §3.8.1.1.

FSH, §§ 4.6.7.1 and 8.1.3.

It was the excess shelter/utility deduction that changed for Petitioner.

Previously, Federal Regulations allowed households who received at least \$1.00 in energy assistance to receive an income deduction for the Heating Standard Utility Allowance (HSUA). (Ops Memo 14-16;

Exhibit 3, pgs. 18 and 19) In 2009, the State of Wisconsin issued an annual energy assistance payment of \$1.00 to FoodShare households who did not already receive energy assistance. (Id.) This allowed all households to receive an income deduction for the HSUA, which is currently, \$450. (Id.)

The 2014 Farm Bill changed the Federal Regulations to require households to receive greater than \$20 in energy assistance, in order to receive the \$450 HSUA. (Ops Memo 14-16; Exhibit 3, pgs. 18 and 19) Consequently, Effective April 1, 2014, the State of Wisconsin ceased providing the \$1.00 energy assistance to households not who were not receiving energy assistance. (Id.)

In Petitioner’s case, she did not report or provide verification an out-of-pocket heating expense in June and July 2014, and as such, would not necessarily receive energy assistance. As such, she was not entitled to the HSUA that she previously received.

Applying the applicable deductions to Petitioner’s income we have the following net income calculation for July and August 2014:

Gross Income	\$788.00	Rent	\$700.00
No Earned Income Deduction		No utility allowance	
Standard Deduction	-\$152.00	50% Net income	-\$318.00
No Medical Expenses exceeding \$35			
No Dependent Care Expenses		<u>Excess Shelter Expense</u>	<u>\$382.00</u>
<u>Net Income</u>	<u>\$636.00</u>		
Excess Shelter Expense	-\$382.00		
<u>Net Income</u>	<u>\$254.00</u>		

Effective November 1, 2013, individuals, in a household of one, with a net income of \$254.00 qualify for a FoodShare allotment of \$112.00 per month. FSH §8.1.2

**CONCLUSIONS OF LAW**

- 1) The agency correctly denied the Petitioner’s request to backdate an increase in her FoodShare benefits to July and August 2014.
- 2) The agency correctly determined Petitioner’s FoodShare benefits for July and August 2014.

**THEREFORE, it is ORDERED**

That the petition is dismissed.

**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).

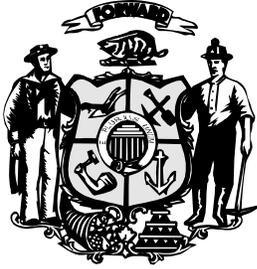
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson 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 24th day of September, 2014.

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\sMayumi M. Ishii  
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 24, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability