



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/160339

PRELIMINARY RECITALS

Pursuant to a petition filed September 02, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on October 09, 2014, at Waukesha, Wisconsin.

The issue for determination is whether Waukesha County Health and Human Services (the agency) correctly denied the Petitioner's request to take his wife's medical expenses into consideration when determining his FoodShare allotment / eligibility.

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: Kathy Jones, Economic Support Specialist
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On September 2, 2014, the agency sent the Petitioner a notice indicating that his Foodshare benefits would be increased from \$182.00 per month to \$192.00 per month. (Exhibit 4)

3. Petitioner filed a request for fair hearing that was received on September 2, 2014. (Exhibit 1)
4. Petitioner receives Social Security Disability Income – SSDI. (Testimony of Petitioner)
5. Petitioner’s wife has not been deemed legally disabled and receives no disability benefits; she is not over age 60 and she is not blind. (Testimony of Petitioner)

DISCUSSION

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 , 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);
- (3) a deduction for certain medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 *CFR* § 273.9(d)(3);
- (4) a dependent care deduction for child care expenses, 7 *CFR* § 273.9(d)(4); and
- (5) a shelter and utility expenses deduction, equal to the excess expense above 50% of net income remaining after other deductions. 7 *CFR* § 273.9(d)(5).

The Petitioner filed an appeal, because he believes the agency should allow an income deduction for his wife’s medical expenses.

The medical expense deduction is determined, “using verified allowable monthly medical expenses incurred by elderly, blind or disabled FoodShare group members exceeding \$35 per month.” *FoodShare Wisconsin Handbook §4.6.4*

The term ‘disabled’ is a term with a definition as to the FoodShare program:

3.8.1.1 EBD Introduction

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member 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.

The Petitioner’s wife does not meet the above definition of an elderly, blind or disabled person. As such, any medical expenses that she incurs may not be used as an income deduction.

The Petitioner argues that it is not fair to apply the foregoing rules to his household, because his wife incurs such significant medical expenses, i.e. \$2,292.49 for her prescriptions. Petitioner’s case is sympathetic, but administrative law judges do not possess equitable authority and must follow the law as it is written.

CONCLUSIONS OF LAW

The agency correctly denied the Petitioner’s request to allow a deduction for his wife’s medical expenses.

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 20th day of October, 2014

\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 October 20, 2014.

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