



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/160994

PRELIMINARY RECITALS

Pursuant to a petition filed October 02, 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 telephonic hearing was held on November 26, 2014.

The issue for determination is whether the agency correctly calculated petitioner's FS effective November 1, 2014.

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, IM Spec. Adv.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's gross monthly income is \$875.78.
3. Petitioner pays \$400 in monthly rent which includes utilities.

4. On September 24, 2014 the agency issued a notice to petitioner stating that effective November 1, 2014 his FS would decrease to \$16. See Exhibits 3 and 4.

DISCUSSION

FS benefits are calculated pursuant to 7 C.F.R. §273.9. The maximum FS allotment amounts, based on household size, are listed at *FoodShare Wisconsin Handbook*, §8.1.2. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

In calculating the petitioner's allotment, the agency must follow the procedure set by the federal FS regulations, which is restated in the *FS Handbook*. 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, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6.1 are allowed: a standard deduction, an earned income deduction, a medical expenses deduction, a child support payment deduction, a dependent care expense deduction, and a shelter expense deduction. Some FS groups are not allowed a deduction for some expenses and some expenses are not always deducted in full.

The decrease in petitioner's FS occurred because of a change in policy regarding utility deductions. The policy in question relates to Operations Memo #14-16, available online at <http://www.dhs.wisconsin.gov/em/ops-memos/2014/PDF/14-16amended2.pdf>. Of particular relevance here, it states, "If a household does not claim to have any utility obligation for the current residence and has not received a WHEAP payment, no utility allowance will be granted." Petitioner did not have a utility obligation, so he did not get the utility allowance. As noted in the policy cited above, this change in policy was to take place for FS renewals processed on or after April 28, 2014 as it did here. I add for petitioner's information that this Operations Memo took effect due to federal changes made in The Agricultural Act of 2014 (P.L. 113-79). Petitioner can check this information at http://www.fns.usda.gov/sites/default/files/LIHEAP_Implementation_Memo.pdf.

The agency presented the budget screen to show how it determined petitioner's FS. Petitioner did not quarrel with the arithmetic. I have reviewed the information post-hearing as well and find no errors in the computations.

Petitioner argues that because his rent includes utilities that he is paying for utilities and therefore should get the deduction. As noted in the policy, a FS recipient can get a utility deduction for those utilities that recipients are *obligated to pay*, or *actually paying*. Petitioner lives in a group home. He has not presented any information to show that he is obligated to pay or is actually paying for utilities. He may very well be obligated to pay his rent in order to keep living there, but there is no evidence to show that he has an obligation to pay the home's utilities.

I remind the petitioner that if his income decreases, or has other changes to his household, he must report and verify that to the agency so his FS can be redetermined. I add, assuming petitioner feels that this is not a fair determination, that I do not have equitable powers and cannot deviate from what law and policy dictate. See Oneida County v. Converse, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). In other words, I cannot change the outcome here because it would be fair.

CONCLUSIONS OF LAW

The agency correctly calculated petitioner's FS effective November 1, 2014.

THEREFORE, it is

ORDERED

The petition for review herein 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 10th day of December, 2014

\sKelly Cochrane
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 December 10, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability