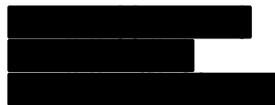




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/161003

PRELIMINARY RECITALS

Pursuant to a petition filed September 30, 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 November 20, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether there is evidence to demonstrate that Petitioner's FoodShare allotment has been calculated incorrectly.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Simone Johnson
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner was sent a Notice of Decision dated September 30, 2014 that informed Petitioner that her FoodShare allotment was being reduced effective October 1, 2014 from \$438.00 to \$112.00.

That allotment was later changed with the inclusion of a medical expense deduction in the allotment calculation formula to \$204.00 after a \$22.00 recoupment.

3. The change from \$438.00 to \$112.00 occurred as Petitioner reported a reduction in income on a six month report form and in processing that the agency accidentally zeroed out Petitioner's medical expense deduction.
4. Petitioner's FoodShare allotment was \$269.00 after a recoupment during the months from May 2014 through August 2014. It increased to \$438.00 for September 2014 though it is not why.
5. Petitioner's household size is 3.
6. Petitioner's household income consists of Social Security Disability income for Petitioner of \$921, Social Security for a minor child of \$377 and earned income received by Petitioner's spouse through the IRIS program determined by the agency to be \$1479.24 based on his two September 2014 IRIS paycheck stubs.
7. When the \$112.00 allotment was calculated Petitioner had not been credited with a medical expense deduction. For the \$204.00 allotment calculation a medical expense deduction in the amount of \$496.30 was given (\$531.30 - \$35.00). Petitioner has also been credited with the standard deduction of \$155.00, an earned income deduction of 20% and a shelter deduction of \$880.95 based on rent or mortgage of \$1350 and a utility allowance of \$446.00.
8. Benefits were continued at the \$438.00 level pending this hearing decision.

DISCUSSION

As a threshold issue the notice of the October 1, 2014 FoodShare reduction is dated September 30, 2014. Clearly this is not timely notice as required by Federal regulation and State policy. *7 Code of Federal Regulations (CFR), §273.13(a)(1); FoodShare Wisconsin Handbook (FSH), § 6.3.1.* The practical effect of this here is that the reduction cannot begin until November 1, 2014; nonetheless, as benefits were continued there is no supplemental issuance to order.

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

After gross income is determined the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$155 per month for a household of 1-3 persons, *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) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction – the utility allowance is a variable based on a number of factors but the ultimate deduction equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).* There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.1 and 8.1.*

Also of particular note here is the following detail on the how medical expenses may be used:

4.6.4.3 Budgeting Medical Expenses including MA Deductible Expenses

Medical expenses for elderly, blind, or disabled members may be entered through one of the following budgeting methods:

- Budgeted as a recurring monthly expense,
- Budgeted as a onetime lump sum expense for one month,
- Budgeted for the remainder of a FS certification period,
- Budgeted based on the terms of a payment plan, or
- Averaged over the time period a one-time medical expense was intended to cover (such as a prepaid or met medical deductible).

Under all of the budgeting options, the obligation amount (amount incurred) is counted rather than the amount paid. The member may or may not pay the bill so it is important to make sure that the expense is not counted more than once.

A monthly medical expense obligation budgeted based on the terms of a payment plan can be claimed for as long as the original payment plan is in place. Amounts still due after they were budgeted during a previous FS certification period may not be included as part of the monthly expense.

The averaging of the onetime medical expense cannot extend past the certification period in which the expense was originally counted.

Except when an expense is averaged during a certification period, the expense should be budgeted starting with the month it is billed or otherwise becomes due, regardless of when the member intends to pay the expense. Allow the expense in the next possible benefit month. For instructions on how to enter allowable medical expenses into CWW, see Process Help, Section [18.2.4](#) Other Medical Expenses - Medical Expenses Page.
FSH, §4.6.4.3.

Petitioner argues that not all household income should be counted as it may not be for income tax purposes, that she has special diet needs and that medical expenses have not been correctly applied.

In reviewing the agency determinations here I am unable to identify an error in the determination that Petitioner was eligible for \$204.00 in FoodShare per month after the recoupment. All of the income of the type received by Petitioner’s household is countable. There is no exclusion for the Social Security income or of the earned income. *See FSH, §4.3.2.2 & 4.3.4.2.* Further, though Petitioner complains of the application of medical expenses it is such a general complaint that it is not possible to identify where an error might be and it gives no basis for directing any recalculation by the agency. I do note that the deduction is for FoodShare household members who are elderly, blind or disabled not all household members. Finally, if Petitioner can point to a particular medical expense or group of medical expenses not allowed or used as a medical expense deduction she should note the rehearing instructions below.

CONCLUSIONS OF LAW

That there is insufficient evidence to demonstrate that the agency erred in determining Petitioner’s FoodShare allotment as of the calculation showing Petitioner eligible for \$204 of FoodShare (after a recoupment).

THEREFORE, it is **ORDERED**

That this appeal is dismissed.

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 Milwaukee,
Wisconsin, this 23rd day of December, 2014

\sDavid D. Fleming
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 23, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability