



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/161312

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 17, 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 06, 2014, at Milwaukee, Wisconsin.

The issues for determination are 1) whether petitioner's appeal was timely filed for July-September FS and 2) whether the agency correctly determined petitioners' FS for October.

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. On June 6, 2014, the county agency sent a written notice of negative action to the petitioner. The negative action in this case was decrease in FS effective July 1, 2014.
3. On September 8, 2014 the agency issued a notice of decision stating that effective October 1, 2014 his FS would be \$16.
4. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on October 17, 2014.

### DISCUSSION

- 1) Timeliness of July-September FS appeal.

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., § 273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 133 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case for petitioner's FS from July-September.

- 2) Whether the agency correctly determined petitioners' FS for October.

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.

Petitioner did not understand why his FS decreased. I note that this is the same issue appealed for the July-September FS. As the agency explained at hearing, the decrease occurred due to a change in policy. 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 that someone who only pays for a phone bill will receive a \$30 phone utility credit. Petitioner previously received a larger utility credit, so this change impacted the amount of FS he received after the change in policy. 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](http://www.fns.usda.gov/sites/default/files/LIHEAP_Implementation_Memo.pdf). As noted in the policy, this change was to take place for all FS applications with a filing date on or after April 28, 2014 and FS renewals processed on or after April 28, 2014 for a recertification period starting June 1, 2014, as it did here when he completed his renewal in June.

The agency also explained that the October FS increased due to a mass Cost Of Living Adjustment (COLA). As of October 1, 2014 the minimum monthly FS allotment for categorically eligible food units that include one or two individuals increased from \$15 to \$16. See Ops Memo DHS 14-37 Amended, available online at <http://www.dhs.wisconsin.gov/em/ops-memos/2014/PDF/14-37amended.pdf>. Thus, he received an increase in the minimum allotment accordingly.

The agency presented the budget screen to show how it determined petitioner's FS. Petitioner did not quarrel with the arithmetic, but again wanted confirmation that the agency acted correctly given some conflicting information he had received. I have reviewed the information post-hearing as well and find no errors in the computations.

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).

### **CONCLUSIONS OF LAW**

1. There is no jurisdiction as the appeal is untimely for July-September 2014 FS.
2. The agency correctly determined petitioner's FS for October 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 November, 2014

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\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 November 24, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability