



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/161561

PRELIMINARY RECITALS

Pursuant to a petition filed October 27, 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 Milwaukee Enrollment Services (the agency) correctly determined the Petitioner's FoodShare allotment effective November 1, 2014.

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: Pang Thao-Xiong, 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 # ) is a resident of Milwaukee County.
2. On October 17, 2014, the Petitioner called the agency to complete a FoodShare renewal. (Exhibit 2, pg. 9)
3. On October 20, 2014, the agency sent the Petitioner a notice indicating that effective November 1, 2014, her FoodShare benefits would be \$21.00 per month. (Exhibit 2, pgs. 19-23)

4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 27, 2014. (Exhibit 1)
5. On October 31, 2014, the agency sent the Petitioner a notice advising her that effective November 1, 2014, her FoodShare benefits would be decreased from \$185.00 per month to \$51.00 per month. (Exhibit 3)
6. Petitioner pays rent in the amount of \$500, which include heat and electricity. (Testimony of Petitioner; Exhibit 3)
7. Petitioner pays a cell phone bill. (Testimony of Petitioner)
8. Petitioner's assistance group size is one. (Exhibit 2, pg. 6)
9. Petitioner receives \$83.78 per month in State SSI and \$721.00 per month in Federal SSI payments. (Exhibit 2, pgs. 11 -13)

DISCUSSION

Petitioner filed an appeal to contest the reduction of her FoodShare 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 –

Effective October 1, 2014, this was \$155.00 for an assistance group of 1-3 people, 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 \$490 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.

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) 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, regardless of whether they actually paid a separate heating bill. (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 \$446 HSUA. (Ops Memo 14-16) Consequently, Effective April 1, 2014, the State of Wisconsin stopped providing the \$1.00 energy assistance to households not who were not receiving energy assistance. (Id.) Consequently, many of those households, like the Petitioner's, lost the HSUA deduction, which in turn, resulted in a drastic reduction in their FoodShare benefits.

Although the Petitioner is not entitled to the HSUA, because she does not pay a separate heating utility bill, she is entitled to a phone utility allowance of \$30.00, because she pays for a cellular phone through [REDACTED] FSH §4.6.7.3, item number 5 states that, a deduction for the Phone Utility Allowance (PUA) is permitted, "if obligated to pay or actually paying for only a telephone, including cellular phones."

"For households that have not received a WHEAP payment, verification of the household's utility obligation will be required only if determined to be questionable. If verification is requested and not submitted the utility expense would not be considered when determining which utility allowance is appropriate for the household." Id.

Petitioner's allotment calculation for November 1, 2014 forward works out to be as follows:

Gross Income	\$804.78	Rent	\$500.00
No Earned Income Deduction		PUA	+\$30.00
Standard Deduction	-\$155.00	50% Net income	-\$324.89
No Medical Expenses exceeding \$35			
No Dependent Care Expenses		Excess Shelter Expense	\$205.11
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Net Income	\$649.78		
Excess Shelter Expense	- \$205.11		
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Net Income	\$444.67		

Individuals, in a household of one, with a net income of \$444.67 qualify for a FoodShare allotment of \$60 per month. FSH §8.1.2

CONCLUSIONS OF LAW

The agency did not correctly determine the Petitioner's FoodShare allotment effective November 1, 2014.

THEREFORE, it is ORDERED

That the agency issue to the Petitioner FoodShare benefits totaling \$60.00 per month effective November 1, 2014. The agency shall take all administrative steps necessary to complete this task within 10-days of this decision.

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 9th day of December, 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 December 9, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability