



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/161618

PRELIMINARY RECITALS

Pursuant to a petition filed October 31, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Milwaukee Enrollment Services to reduce FoodShare benefits (FS), a hearing was held on November 25, 2014, by telephone.

The issue for determination is whether the agency correctly reduced petitioner's FS following a review.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Katherine May
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner receives FS in a two-person household. In October, 2014 the household received \$79 in FS.
3. Petitioner notified the county that his rent was increasing to \$438 per month but that he was responsible only for electricity and phone expenses; heat was included in the rent. The agency issued a notice that FS would increase to \$103 effective November 1, 2014. Petitioner then completed a review, and with the review the agency implemented a new policy regarding utility

expenses. By a notice dated October 13, 2014, the agency informed petitioner that FS for November would be \$53.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$155 per month. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FS Handbook, App. 4.6.7.

In October, 2014, petitioner's shelter deduction was \$228.64 resulting from rent of \$359.83 and a utility expense of \$446. For November he received just a \$168.80 shelter deduction because his rent was \$438.83 and his utility expense was just \$321 for electricity and telephone. The big change was the reduction of the utility standard from \$446 to \$321.

Prior to the federal 2014 Farm Bill the Wisconsin Department of Administration issued an annual energy assistance payment of \$1 to all FS households who were not already receiving energy assistance. This policy allowed Wisconsin to grant all FS households the Heating Standard Utility Allowance of \$450 (reduced to \$446 effective October 1, 2014). Actual utility usage did not matter.

The 2014 Farm Bill changed this practice. The 2014 Farm Bill requires a household to have received an energy assistance payment of greater than \$20 to receive the \$446 utility standard. 7 U.S.C. 2014(e)(6)(C)(ii)(I). Therefore households that do not receive energy assistance receive the utility standard based on the utility obligation actually incurred by the household. The change became effective when households completed their reviews. Handbook, App. 4.6.7.3. Petitioner did not receive energy assistance and his only monthly utility obligations are electricity and phone. Under the new policy a household with only electricity and phone expenses gets a \$321 utility expense rather than a \$446 expense. Handbook, App. 4.6.7.3 and 8.1.3.

I conclude that the agency correctly reduced petitioner's FS. The FS amount is based upon a mandated formula, and the new formula after the passing of the law reduced the amount that can be considered a utility expense. I have reviewed the calculations for petitioner's November FS, and they correctly state household income and rent, and thus I must find that the \$53 allotment was determined correctly. I can find no authority for the Division of Hearings and Appeals to increase the amount above the amount calculated by the formula.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's FS allotment of \$53 after his review was completed.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 Madison,
Wisconsin, this 28th day of November, 2014

\sBrian C. Schneider
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 28, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability