



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FOO/162326

PRELIMINARY RECITALS

Pursuant to a petition filed November 28, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Chippewa County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 16, 2014, at Chippewa Falls, Wisconsin.

The issue for determination is whether the county agency correctly reduced the petitioner's FoodShare the month he began receiving social security rather than waiting until at least the month after this.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact

Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # Redact) is a resident of Chippewa County.
2. The petitioner will begin receiving \$842 monthly social security payments in the third week of January in 2015. The Social Security Administration has informed the county agency of this.

3. The county agency notified the petitioner that his FoodShare would fall from \$189 to \$18 per month as of January 1, 2014.

DISCUSSION

The amount of FoodShare one receives depends upon household size and net income. The petitioner currently has no income and receives \$189 in FoodShare each month, the maximum allowed. Late in January 2015, he will begin receiving \$842 in social security. The county agency became aware of this and reduced his allotment to \$18 a month beginning in January 2015. He does not dispute the agency's calculations, but contends it should not reduce his benefits until later because doing so treats him worse than others whose income changes.

The basis of his argument is that those whose income increases above a certain level have 10 days to report the change. Agencies must then act on that change the month after it is reported. 7 CFR § 273.12(a)2 and (c)(2). Because the petitioner will receive his first social security check around January 23, 2015, he would not have report it until February, and the change would not go into effect until March. But this rule is not meant to favor some types of income or discriminate against others, such as social security. Rather, it merely recognizes that many changes of income cannot be anticipated and that when these changes occur the recipient and the agency should both have a reasonable period to act upon them. The level of a FoodShare allotment is meant to reflect a person's financial situation at any particular time. When an agency knows that a person's income will rise at a set date, it adheres to this principle by changing the benefits the same month that the income changes.

This treatment is consistent with federal FoodShare regulations. The agency must count income if it is "reasonably certain" the person will receive it but not count it if the amount or the date on which it will be received is uncertain. Thus money from a new job or benefit "shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount..." 7 CFR § 273.10(c). Any anticipated income is counted only in the months it is expected to be received. CFR § 273.10(c)(2).

The county agency knew well in advance that the petitioner would receive \$842 a month social security in the third week of January in 2015. Based upon this knowledge, it correctly reduced the FoodShare he received beginning in that month.

CONCLUSIONS OF LAW

The county agency correctly reduced the petitioner's FoodShare allotment in the month his income increased.

THEREFORE, it is

ORDERED

The petitioner's 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 Madison,
Wisconsin, this 18th day of December, 2014

\sMichael D. O'Brien
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 18, 2014.

Chippewa County Department of Human Services
Division of Health Care Access and Accountability