



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/162007

PRELIMINARY RECITALS

Pursuant to a petition filed November 13, 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 telephonic hearing was held on December 04, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly terminated petitioner's FS due to being over the income limit.

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, IM Spec. Adv.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

Also present: [Redacted], Spanish Interpreter

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 November 6, 2014 petitioner completed a renewal for FS.

3. On November 11, 2014 the agency received verification of petitioner's monthly earnings. See Exhibit 3. Petitioner's monthly household income was determined to be \$2033.90.
4. On November 7, 2014 the agency issued a notice of decision to petitioner stating that effective December 1, 2014 her FS would end due to being over the income limit for a household of 1.

DISCUSSION

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, including child support. 7 C.F.R. § 273.9(b); see also *FoodShare Handbook*, §4.3.4.2. 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. 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>.

The agency showed how it calculated petitioner's monthly earned income. Petitioner is paid bi-weekly for 40 hours per week at \$11/hr, and for 2 hours per week of overtime at \$16.50/hr. This results in calculations that looks like this: $\$11 \times 80 \times 2.15 = \1892 and $\$16.50 \times 4 \times 2.15 = \141.90 , for a total of \$2033.90. The agency multiplies by 2.15 because of the prospective budgeting that the agency employs in issuing FS. The policy states:

When income is received on a weekly or biweekly basis, convert the income to a monthly amount for FS, CC and W2 by multiplying average weekly amounts by 4.3 and biweekly amounts by 2.15. This conversion takes into consideration the fact that there will be extra paycheck months throughout the year.

See *Process Help Guide*, §16.4.3.

Most FS groups are considered categorically eligible if their gross income is at or below 200% FPL. 200% FPL during the time period here was \$1,946 for a household of one. See *FoodShare Wisconsin Handbook*, §8.1.1. Petitioner was above this amount. FS groups that are not categorically eligible must pass the net income test based on net income limits and group size. The net income limit during the time period here was \$973 for a household of one. *Id.* Petitioner is above this limit as well.

Petitioner did not dispute the income calculated for her, but rather wanted some expenses considered when determining her net income such as car insurance and cable. These are not allowable expenses under the regulations cited above. While I understand these are real expenses for petitioner, I cannot deviate from what the law requires and I do not have equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Petitioner also wanted her adult son to be included in her FS household, but he has not been shown to be eligible because as a non-citizen, he must have lived in the US as a qualified alien for 5 years from the date of entry. See *FS Handbook*, §3.12.1.1.

The petitioner also raised questions about a medical expense deduction. As the agency explained, a medical expense deduction is determined using verified allowable monthly medical expenses incurred by elderly, blind, or disabled FS group members exceeding \$35 per month. See *FS Handbook* §4.6.4. At this time, petitioner has not presented medical expenses incurred by the FS group, but rather for her son who is not included in the group. If she does have medical expenses that exceed that monthly amount,

she may provide them to the agency so that it may be considered for a deduction. I remind the petitioner that if her income decreases, or has other changes to her household she can always reapply.

Based on the preponderance of the evidence before me, I must find that the agency correctly terminated petitioner’s FS due to being over the income limit.

CONCLUSIONS OF LAW

The agency correctly terminated petitioner’s FS due to being over the income limit.

THEREFORE, it is ORDERED

The petition for review herein be 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 6th day of January, 2015

\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 January 6, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability