



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FOO/162319

PRELIMINARY RECITALS

Pursuant to a petition filed November 29, 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 December 23, 2014, by telephone.

The issue for determination is whether the agency correctly determined petitioner's FS allotment after a review.

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact
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 # Redact) is a resident of Milwaukee County.
2. Petitioner resides with his wife and four children. Two of his children are adults. Both adult children attend college full time and are not employed.
3. In 2014 monthly household income included petitioner's social security of \$1,193, disability income of \$230.20, and \$594 social security family payments for petitioner's wife and the two minor children. Previously that amount was divided between petitioner's wife and all four

children, but as the two older ones became adults they were dropped from the social security payment and the payment now is divided among only the three remaining family members. Monthly shelter expenses are \$674.56 per month plus utilities.

4. Prior to a review in November, 2014, petitioner received FS for the six-person household. When the school status for the adult children was revealed, they lost eligibility for FS. Thus FS for December, 2014 was for just a four-person household, and FS were decreased from \$415 to \$114. The amount was increased to \$151 when an error in the shelter expense was discovered.

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 \$165 per month for a household of four. 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. The maximum shelter deduction is \$490 unless the household includes an elderly or disabled individual; in those cases there is no shelter cap. Handbook, App. 8.1.3. and 4.6.7.1.

A person who is enrolled at least half time in higher education is ineligible for FS unless he or she meets a specific exemption criterion. 7 C.F.R. §273.5(a); FS Handbook, Appendix 3.15.1. The exemption criteria are found at 7 C.F.R. §273.5(b). A student in higher education can be exempt if he or she is:

- (1) Under age 18 or over age 49;
- (2) Physically or mentally unfit for gainful employment;
- (3) Receiving Aid to Families with Dependent Children (AFDC);
- (4) Enrolled as a result of participation in the AFDC work program or its successor;
- (5) Employed a minimum of 20 hours per week, or if self-employed, receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;
- (6) Participating in a state or federally financed work study program during the school year;
- (7) Participating in on-the-job training;
- (8) Responsible for the care of a dependent household member under age 6;
- (9) Responsible for a dependent household member between 6 and 12 if child care is unavailable;
- (10) A single parent responsible for a dependent child under age 12.
- (11) Assigned or placed in the school by or in compliance with a work program, including the Food Stamp Employment and Training (FSET) Program.

See also the FS Handbook, App. 3.15.1. The Handbook provisions differ from the federal regulation in that Wisconsin Works (W-2) eligibility replaces AFDC as described in no. 3 above, there is an additional exemption for a person placed in school through the Workforce Investment Act, and there is an additional exemption for a student "enrolled in an educational program that is designed to be completed in 2 years or less and obtaining certification or a diploma from the program will lead to employment that is in demand."

The big change for petitioner's FS household is the removal of the two college students. The FS rule regarding students is quite clear; they are ineligible for FS unless they meet an exemption, and none are

evident. It is evident that Congress does not intend to fund college education with FoodShare unless one of those specific criteria is met. The agency inquired about work study, but neither student was in it.

I have reviewed the FS calculation and they are correct. The correct income and expenses were entered, and the result is a monthly FS amount of \$151.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's FS amount after two family members were removed from the FS household due to full-time school enrollment.

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 6th day of January, 2015

\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 January 6, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability