



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

FOO/162469

PRELIMINARY RECITALS

Pursuant to a petition filed December 5, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to the sufficiency of FoodShare benefits (FS), a telephone hearing was held on December 30, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly reduced the petitioner's December, 2014, FS allotment from \$82 to \$50 due to a decrease in excess medical expenses.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact

Respondent:

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

By: [Redacted], HSPC
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a 49 year old disabled (SSI recipient) resident of Milwaukee County. He was a one person FS household in November, 2014, receiving \$82 of FS per month. At that time he was having a net of \$69.90 deducted from income in his FS budget, as excess medical expense exceeding \$35, because he was paying out of pocket his Medicare Part B premium of \$104.96 per month.
2. The petitioner's rent is \$641 per month, plus utilities. He does not have any dependent care or earned income expenses. His excess shelter expense deduction for December, 2014, budgeting

was determined to be \$482.50 based upon this rent and utilities. His excess medical expense was decreased to \$0 because Medicaid began paying the petitioner's Medicare Part B premium on his behalf in December, 2014. His gross countable unearned income was \$1,114 in Social Security benefits. The petitioner did not allege that the agency counted his income incorrectly at any time. The agency allowed a Standard Deduction from income of \$155 in each budget month.

3. On December 5, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the sufficiency of his FS allotment for December, 2014.
4. Subsequently, the petitioner's Social Security benefit increased effective January, 2015, to \$1,133 per month due to an annual cost-of-living-adjustment ("COLA").

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 for a one-person household. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin 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); FoodShare Wisconsin 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); FoodShare Wisconsin Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FoodShare Wisconsin 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); FoodShare Wisconsin Handbook, App. 4.6.7.

In a fair hearing concerning the sufficiency of FS issued, the burden of proof is on the Department to demonstrate that it correctly computed the petitioner's FS allotments, and the petitioner must then rebut this evidence with her own evidence showing the agency was incorrect.

The petitioner is not entitled to any dependent care expense or earned income expense deductions, having neither expense. He was granted the proper standard deduction (\$155). The excess shelter expense deduction was properly computed using ½ of net adjustable income minus allowable shelter costs in the requisite manner under FS rules to arrive at the applicable deduction(\$482.50). He did not contest the excess shelter expense deduction computation either; and in any event, I do not find any error. This leaves the excess medical expense deduction for elderly or disabled FS households when the expense exceeds \$35 per month ongoing. The petitioner no longer pays that expense out of pocket and has not demonstrated any other allowable ongoing medical expenses exceeding \$35 month that he does pay. See, FoodShare Wisconsin Handbook, Appendix 4.6.4.1. Thus, that deduction is now \$0, as determined by the agency.

In essence, the petitioner asserts that this is unfair because he believes he is in need of more FS assistance than he is receiving at the \$50 allotment level. The authority of the Division's administrative law judges is limited to the four corners of the law and program regulations. I do not possess the powers of a court of equity, and thus cannot disregard the FS rules and policy. The agency action must be sustained. The agency correctly determined the petitioner's FS allotment for December, 2014, and his appeal must be dismissed.

As a side note to the petitioner, he noted at the hearing that his unearned income was set to increase in 2015 due to a Social Security cost-of-living-adjustment ("COLA"). Such an adjustment is countable income for FS purposes and will affect his FS eligibility. If the petitioner has reason to believe the agency erred in the computation of his January or February, 2015, FS allotment, he must file a new appeal concerning such actions. I do not possess ongoing and general jurisdiction concerning his FS case. Rather, he must appeal individual negative actions taken by the Department in order to have such decisions reviewed.

CONCLUSIONS OF LAW

That the county agency correctly determined the sufficiency of the petitioner's FS allotment for December, 2014 at the \$50 level.

THEREFORE, it is

ORDERED

That the petitioner for review herein be, and the same hereby 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 15th day of January, 2015

\sKenneth D. Duren, Assistant Administrator
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 15, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability