



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/164052

PRELIMINARY RECITALS

Pursuant to a petition filed February 19, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 10, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly reduced petitioner's FS effective March 1, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Katherine May, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and has been a recipient of FS.
2. On February 9, 2015 the agency issued a notice of decision to petitioner stating that effective March 1, 2015 his FS would decrease to \$16 because his utility expenses decreased.

DISCUSSION

FS benefits are calculated pursuant to 7 C.F.R. §273.9. 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>.

In calculating the petitioner's allotment, the agency must follow the procedure set by the federal FS regulations, which is restated in the *FS Handbook*. In determining the amount of FS to be issued each month, the FS agency must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. § 273.9(b). 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.

In this case, the agency explained that the decrease in FS occurred due to a change in policy. The policy in question relates to Operations Memo #14-16, available online at <http://www.dhs.wisconsin.gov/em/ops-memos/2014/PDF/14-16amended2.pdf>. Of particular relevance here, it states,

Households that have not received WHEAP will receive the appropriate utility standard based on the utility obligation(s) incurred by the household at the food unit's current residence as described below:

1. The Heating Standard Utility Allowance (HSUA), if obligated to pay, or actually paying for any heating source, including but not limited to gas, electric, wood, propane, etc.
2. The Limited Utility Allowance (LUA), if obligated to pay, or actually paying for two or more of any non-heat qualifying utility expenses. The qualifying utility expenses are phone, water, sewer, electric, cooking fuel, or trash.
3. The Electric Utility Allowance (EUA), if obligated to pay, or actually paying for only a non-heat electric bill.
4. The Cooking Fuel Utility Allowance (FUA), if obligated to pay, or actually paying for only a fuel used for cooking that is not also used for a heating source.
5. The Water Utility Allowance (WUA), if obligated to pay, or actually paying for only a water bill, a sewer bill, septic tank installation or maintenance, or wastewater treatment bill.
6. The Phone Utility Allowance (PUA), if obligated to pay, or actually paying for only a telephone, including cellular phones.

Petitioner's only utility obligation was reported as a phone utility, so he received that utility allowance of \$30, which impacted the amount of FS he received. In previous months he received a larger allowance as his previous residence did not include utilities. However, when he moved to his new residence where his utilities were included, that changed the allowance.

I add for petitioner's information that this Operations Memo took effect due to federal changes made in The Agricultural Act of 2014 (P.L. 113-79). Petitioner can check this information at http://www.fns.usda.gov/sites/default/files/LIHEAP_Implementation_Memo.pdf.

The agency presented the budget screen to show how it determined petitioner's FS. Petitioner did not quarrel with the arithmetic. I have reviewed the information post-hearing as well and find no errors in the computations. Having no evidence to find the agency's action in error, it must be sustained. I cannot

change the FS allowance based on any kind of fairness argument. I must apply the law as it is written. See Oneida County v. Converse, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993).

I remind the petitioner that if his income decreases, or has other changes to his household or expenses, he must report and verify that to the agency so his FS can be redetermined.

CONCLUSIONS OF LAW

The agency correctly reduced petitioner’s FS effective March 1, 2015.

THEREFORE, it is ORDERED

The petition for review herein 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 Milwaukee,
Wisconsin, this 2nd day of April, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 2, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability