



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/164356

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on June 30, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's FS benefits.

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: Karen Pearson

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. From September 28, 2014 – October 25, 2014, the Petitioner's bathroom was remodeled to make it wheelchair accessible. The Petitioner has cellulitis, pulmonary hypertension, chronic obstructive pulmonary disorder and congestive heart failure. She uses oxygen daily. Due to the

dust and debris from the remodeling project, the Petitioner stayed at a hotel so that her respiratory condition was not compromised. Her hotel bill was \$2,156.59.

3. On January 16, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would decrease from \$194/month to \$16/month effective February 1, 2015. This was based on gross unearned income of \$1,567.90, medical expenses of \$172.53, shelter expenses of \$639.23, and a heating standard utility allowance of \$446.
4. On February 26, 2015, the Petitioner filed a request for a hearing with the Division of Hearings and Appeals. A hearing was scheduled for May 12, 2015. The Petitioner did not appear and an order of dismissal was issued on May 15, 2015. On June 8, 2015, the Petitioner's request for a rehearing was received and was granted on June 9, 2015.

DISCUSSION

In determining the amount of FS to be issued each month, the agency must budget all of the recipient's nonexempt income, including earned and unearned 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 Handbook (FSH), § 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); FSH, § 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); FSH, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH, § 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); FSH, § 4.6.7.

In this case, the Petitioner disputes the agency's determination with regard to her excess medical expense deduction. Prior to February 1, 2015, the agency determined the Petitioner had countable medical expenses of \$876.03. Effective February 1, 2015, the agency determined the Petitioner had countable medical expenses of \$172.53. This change affected the medical expense deduction and resulted in a decrease in the Petitioner's FS benefits.

The Petitioner argues that her hotel expense that she incurred for the duration of her stay during her bathroom remodel should be a countable medical expense.

Previously acquired and unpaid medical expenses may be used to calculate a deduction for determining FS benefits. FSH, § 4.6.4.1. One time medical expenses (i.e. hospital bills) can be budgeted for one month or averaged over the remaining certification period. *Id.* The FSH contains a list of allowable medical expenses in determining FS benefits:

Allowable medical expenses are:

1. Medical and dental care including psychotherapy and rehabilitation services provided by a state licensed practitioner or other qualified health professionals, including chiropractors and acupuncturists.
2. Hospitalization or outpatient treatment, nursing and nursing home care. This includes payments by the FS group for a person who was a FS group member immediately before entering a state recognized hospital or nursing home.
3. Prescription drugs when prescribed by a licensed medical practitioner authorized under state law. This includes the cost of postage for mail-order prescription drugs.

4. Over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional.
5. Sickroom equipment (including rental), or other pre-scribed equipment, and medical supplies.
6. Health and hospitalization insurance premiums, including Medicare premiums. . .
7. Dentures, hearing aids, and prosthetics.
8. Purchase and maintenance costs of any animal specifically trained to perform some function that the member cannot readily perform or help compensate for a physical condition, to serve the needs of disabled program participants, including the cost of food and veterinarian care. . .
9. Eye glasses and contact lenses prescribed by an ophthalmologist or optometrist.
10. Reasonable cost of transportation and lodging to obtain medical care. . .
11. Charges for an attendant, homemaker, home health aide, child care, or housekeeper necessary due to age, infirmity or illness. . .
12. Any cost-sharing, co-payment, or MA deductible expense incurred by an MA recipient, including MA deductible pre-payments.
13. Payments made on a loan's principal if it was used to pay a one-time medical expense. Do not allow loan expenses, such as interest.
14. BadgerCare and Medicaid Purchase Plan (MAPP) premiums.
15. The SeniorCare enrollment fee.
16. Lifeline / MedicAlert. The costs of Lifeline or MedicAlert devices used by persons to contact medical help in emergencies are an allowable medical expense deduction for FoodShare benefits if prescribed by a licensed practitioner or other qualified health professional.
17. Medical expenses billed on a charge card are allowable. The interest cannot be included as a deduction.

FSH, § 4.6.4.1.

As noted above, there is also a deduction for shelter expenses when determining FS benefits. Shelter expenses that may be allowed include:

1. Rent
2. Home mortgage and property taxes (if not in the mortgage). . .
3. Countable utility expenses
4. Mobile home lot rent and loan payments
5. Insurance on the structure (if not included in the mortgage). . .
6. Second mortgage or home equity line of credit (regardless of what the mortgage is used for)
7. Special assessments.
8. Condominium fees or condo association fees.

The costs for the repair of damages to a home due to natural disasters may be counted as a shelter expense. Examples of natural disasters are fires, floods, hurricanes, and tornadoes. Expenses for repairs that have been or will be reimbursed to the food unit by any private or public relief agency, insurance company, or any other source may not be counted. FSH, §4.6.7.2.

There is no provision in the FS regulations that allows for the Petitioner's hotel bill to be counted as either a medical expense or shelter expense. I am bound to apply the regulations as they are written and thus I must conclude that the agency properly determined the Petitioner's FS benefits effective February 1, 2015 when it did not allow the hotel bill as a deductible expense.

I note that the Petitioner also had questions regarding additional medical bills she had submitted to the agency. The agency representative noted that the agency had not received any additional bills and advised the Petitioner to re-submit the bills so the agency could review them. The Petitioner was advised that, if she submits additional bills, she will be notified of the agency's determination and will have new appeal rights regarding that determination.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner's FS benefits effective February 1, 2015.

THEREFORE, it is **ORDERED**

That 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.

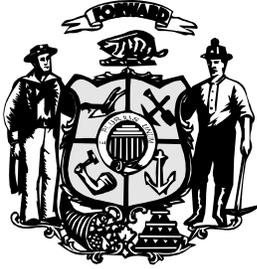
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 8th day of July, 2015

\sDebra Bursinger
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 July 8, 2015.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability