



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

FOO/165316

PRELIMINARY RECITALS

Pursuant to a petition filed April 9, 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 April 30, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly reduced the petitioner's FS to \$47 in April, 2015, due to a reduction in allowable shelter 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]
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 64 year old resident of Milwaukee County. She is a one person FS household and she was receiving \$161 of FS in March, 2015. She was subject to recertification review in April, 2015.
2. Effective April 1, 2014, the Department changed FS policy concerning the application of the Standard Utility Allowance. During the nationwide recession, the Department had received approval of a FS State Plan that provided that the Department could grant the Standard Utility Allowance to all households regardless of whether any individual household did not have actual

standalone utility expenses. The new policy directed agencies to return to a former policy of applying the standard utility allowances only for utilities for which an applicant could demonstrate an actual utility bill obligation.

3. At review, the petitioner reported that she pays rent of \$181, including utilities. She has no other allowable utility costs.
4. Apparently the petitioner's review was conducted on March 27, 2015, and the agency computed her FS eligibility as shown in Exhibit #5, p. 2. Her gross income is \$645 of SSI benefits per month. The agency deducted the standard deduction of \$155. Adjusted income was therefore \$490. $\frac{1}{2}$ of \$490 is \$245. This amount is more than the petitioner's reported shelter expense of \$181, so she was not awarded any excess shelter expense deduction as the computation deems she has enough to cover that shelter expense because $\frac{1}{2}$ net adjusted income exceeds it. Her net adjusted income was therefore determined to be \$490. The maximum FS allotment for 1 person is currently \$194. The computation provides that 30% of net adjusted income is subtracted from the maximum allotment, equaling the FS allotment. 30% of \$490 is \$147. $\$194$ (maximum allotment) - $\$147$ (30% of net adjusted income) = $\$47$ (allotment awarded). See, Exhibit #5, at p. 2.
5. The petitioner has no dependent care expense. She does not work so she does not have any earned income expense. She was awarded the standard deduction (\$155). She did not qualify for any excess shelter expense deduction due to her low housing costs. She never asserted a claim for an excess medical expense deduction to the agency at any time prior to the hearing held on April 30, 2015.
6. On March 30, 2015, the Department issued a Notice to the petitioner informing her that effective April 1, 2015, her FS allotment would be reduced to \$47.
7. The petitioner testified that she averages about \$30 per month in out of pocket medical expenses. She asserts that she has about \$70 per month in transportation expenses, some of which are for medical treatment. She has never reported excess ongoing medical expenses to the Department or verified such expenses, and therefore has never had any such expenses budgeted. She asserted she is paying about \$100 per month on medical bills that go back in time over 20 years.
8. On April 9, 2015, the petitioner filed an appeal the Division of Hearings & Appeals contesting the reduction of her FS effective April 1, 2015.

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. She was granted the proper standard deduction. The excess shelter expense deduction was properly computed using one-half of net adjustable income minus allowable shelter costs in the requisite manner under FS rules. She pays low rent and utilities are included. She did not qualify for any excess shelter expense deduction. She 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.

4.6.4.1 Allowable Medical Expenses

Allow previously acquired charges (not yet paid) and current payments when calculating a medical expense deduction. Previously acquired charges include charges incurred any time before or during the certification period, as long as the individual is still obligated to pay the expense and the incurred expense has not been previously allowed as a FS deduction.

Past unpaid medical bills can be used to prospectively budget recurring medical expenses at application or recertification.

One time medical expenses (i.e. hospital bills) can be budgeted for one month or averaged over the remaining certification period.

Medical expense payments made during the certification period are allowable. Medical expenses paid prior to the certification period are not allowable.

FoodShare Wisconsin Handbook, Appendix 4.6.4.1.

FS regulations allow out of pocket co-pays for drugs or treatment, or costs incurred, as a medical expense deduction. But the federal regulations also contemplate that this will be an ongoing cost applied in excess of the \$35 per month threshold in an ongoing case. See, 7 C.F.R. §273.9(d)(3). And here, the petitioner has not provided one scintilla of documentary evidence verifying the expenses beyond a handwritten list of her household budget, and she never reported any such expenses to the agency such that the agency could verify the expenses.

The burden, as always, is on the applicant to establish additional eligibility for a benefit program. If she does not report her medical expenses to the agency, the agency cannot ascertain if they are allowable. Recipients of public assistance bear some duty to report their expenses to see if the expense is one of the allowed deductions. Conversely, FS recipients do not get to assert their own categories of expenses that should be allowed as deductions as the petitioner did here in her testimony. Those categories are set by law by the Congress in framing the FS statutes, as implemented by the states. Not every expense a person can have, like clothing, are deductions for FS computation purposes. For example, Congress, in its collective wisdom, does not treat clothing expenses as a deduction for FS purposes.

In essence, the petitioner asserts that this FS reduction is unfair because she was previously getting the Standard Utility Allowance, and now, not. The law changed, and she no longer is “deemed” to have a Standard Utility Allowance as she was prior to the change. See, FoodShare Wisconsin Handbook, App. 4.6.7. (Eff. 01/22/15).

She also alleges that she actually does pay past and present medical expenses, and she should get them deducted. Finally, she believes that she is in need of more FS assistance than she is receiving at the \$47 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 allotment for April, 2015, given the information the petitioner actually provided; and her appeal must be dismissed.

As a side note to the petitioner, she may collect all of her medical expense documentation (past and present) and submit it to the FS agency at any time, and thereby request the agency to determine (going forward in time from this point in time) if she is eligible for more FS because she has ongoing excess medical expenses. I cannot merely wave my hand and make this so retroactively where she never asserted the expense in the past or in any way filed any claim or proof of such expenses. **She never reported or claimed the expenses.** In addition, her testimony as to the exact amounts and timing of such expenses was very vague. She must establish these expenses are ongoing and allowable, and in regular monthly amounts, by reporting them to the agency and verifying the expenses exist with receipts and proof of payments. She would be well-advised to contact her agency and set up a face-to-face appointment.

CONCLUSIONS OF LAW

That the county agency correctly determined the sufficiency of the petitioner's FS allotment for April, 2015 at the \$47 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 1st day of May, 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 May 1, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability