



FH

Redact

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

In the Matter of

Redact

DECISION

FOO/165535

PRELIMINARY RECITALS

Pursuant to a petition filed April 17, 2015, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Northern ES Consortium to reduce FoodShare benefits (FS), a hearing was held on May 19, 2015, by telephone. A hearing set for May 12, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly determined petitioner's FS allotment following her renewal.

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact

Northern ES Consortium
10610 Main St., Suite 224
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Redact) is a resident of Lincoln County.
2. Petitioner receives FS as a one-person household. In February, 2015 she received \$144 in FS.
3. Petitioner was scheduled to complete a renewal by the end of February, 2015. She actually had the appointment on March 2. At the renewal she reported living in subsidized housing renting at \$195 per month with utilities included in the rent. Her income is \$980 per month social security

disability. The agency noted that she pays \$54 per month in medical insurance and \$17.86 in medical bills. She did not receive Energy Assistance in the prior year.

4. By a notice dated March 3, 2015, the agency informed petitioner that she was eligible for \$16 per month FS beginning March 1, 2015.
5. In April petitioner submitted an orthodontic bill for \$1,324 that she paid on her daughter's behalf on April 15, 2015. The agency did not budget the bill for the medical expense deduction because petitioner's daughter is not part of her FS household. She also submitted a \$58.80 dental bill for herself; it was budgeted but did not increase her FS.

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. 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.

This case involves two issues. The first is the shelter deduction. In petitioner's February, 2015 FS calculation, she received a \$405 shelter deduction based upon \$244 rent and \$446 utility standard.

Prior to the federal 2014 Farm Bill the Wisconsin Department of Administration issued an annual energy assistance payment of \$1 to all FS households who were not already receiving energy assistance. This policy allowed Wisconsin to grant all FS households the Heating Standard Utility Allowance of \$446. Actual utility usage did not matter.

The 2014 Farm Bill changed this practice. The 2014 Farm Bill requires a household to have received an energy assistance payment of greater than \$20 to receive the \$446 utility standard. 7 U.S.C. 2014(e)(6)(C)(ii)(I). Therefore households that do not receive energy assistance receive the utility standard based on the utility obligation actually incurred by the household. The change was made effective at the person's first renewal after the change in law. Petitioner did not receive energy assistance and her utilities are included in her rent. She thus has a shelter obligation for FS purposes of just her \$195 rent.

With that change, petitioner's FS were calculated starting with her \$980 income, deducting the \$155 standard deduction and \$36.86 medical expense deduction (\$54 insurance plus \$17.86 medical cost minus \$35), leaving \$786.14 net income. The shelter deduction is calculated by taking one-half of \$786.14 and comparing it to the shelter expense. One-half of \$786.14 is \$393.07, which is higher than the \$195 rent, meaning that there is no shelter deduction. Thus the net income from which FS were determined was \$786.14, and a one-person household with that net income is entitled to \$16 FS. Handbook, App. 8.1.2.

I note here that under the FS calculations, a one-person household's net income would have to be \$590 to receive even one dollar more in FS. FS increase as net income gets lower than \$590. In 2014 petitioner's FS fluctuated because her net income always was below \$590. As income and expenses changed, so too would the FS allotment. Now net income is above \$590, so minor changes in income and expenses will not impact the \$16 FS allotment.

The second issue is the impact of petitioner paying her daughter's orthodontic bill. 7 C.F.R. §273.9(d)(3) reads that the following is deducted in the FS net income calculation: "That portion of medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is elderly or disabled." The subsection goes on to provide that expenses of dependents of the disabled person are not deductible. Thus the deduction is only for expenses incurred by the disabled or elderly person. The payment for petitioner's daughter's dental expense would not be deductible in petitioner's FS calculation even if her daughter was a member of petitioner's FS household.

The \$58 dental bill incurred by petitioner is deductible, but it would be insufficient to bring petitioner's \$786 net income down to \$590.

Petitioner asks that I use my authority as a judge to make an exception. As she pointed out, although her daughter is not living with her, her daughter still eats 6-7 meals per week with her. A Division of Hearings and Appeals judge does not have that type of authority, however. My authority is limited to whether the FS were calculated correctly under the FS rules. It is true that petitioner had a 90% decrease in her FS allotment, but the decrease was due primarily to a change in federal law that, frankly, was intended to reduce recipients' FS. I must conclude, therefore, that the agency correctly determined petitioner's FS to be \$16 per month.

CONCLUSIONS OF LAW

1. The agency correctly reduced petitioner's FS by removing her utility allowance because her utilities are included in her rent.
2. An orthodontic bill paid by petitioner for her daughter cannot be used as a medical expense in the FS calculation because petitioner's daughter is not in petitioner's FS household and she is not disabled.

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 22nd day of May, 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 May 22, 2015.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability