



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/166252

PRELIMINARY RECITALS

Pursuant to a petition filed May 27, 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 June 16, 2015, at Milwaukee, Wisconsin.

NOTE: The hearing ended abruptly when the Petitioner got up and walked out of the hearing room.

The issue for determination is whether jurisdiction exists to consider the merits of the Petitioner's appeal.

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: Pang Thao-Xiong, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 8, 2014, the Petitioner went to Milwaukee Enrollment Services (the agency) to complete a renewal. (Exhibit 2, pg. 8)
3. An agency worker explained to the Petitioner that her benefits would be going down, because of changes in the law affecting the heating standard utility allowance. (Id.)
4. On that same date, the Petitioner filed a request for fair hearing to contest the agency's calculation of her FoodShare allotment for April 2015 going forward. (Exhibit 2, pg. 2)
5. Petitioner's benefits were effectively reduced from \$165.00 per month to \$16.00 per month. (See Exhibit 2, pg. 7)
6. On April 9, 2015, Milwaukee Enrollment Services (the agency) issued written notice to the Petitioner, indicating that as of April 1, 2015, she would receive \$16.00 per month in FoodShare benefits. (Exhibit 2, pgs. 20-24)
7. The Division of Hearings and Appeals conducted a hearing on April 29, 2015 and on April 30, 2015, ALJ Gagnon issued a decision finding that the agency correctly determined that the Petitioner's FoodShare allotment should be \$16.00 per month for April 2015 forward. (Exhibit 2, pgs. 25-27)
8. On May 20, 2015, the Petitioner filed a rehearing request. (DHA records)
9. On May 21, 2015, the Division of Hearings and Appeals issued a decision denying the Petitioner's request for rehearing. (DHA records)
10. On May 27, 2015, the Petitioner filed another request for fair hearing to again contest the \$16.00 FoodShare allotment. (Exhibit 1)

DISCUSSION

The Petitioner has already had an appeal heard by the Division of Hearings and Appeals concerning the April 2015 reduction in her FoodShare benefits and it was determined that the agency acted correctly.

The Petitioner also filed a request for rehearing and that request was denied because she failed to show that the April 30, 2015 decision contained a material error of law; she failed to show that the decision contained a material error of fact and she failed to show the existence of new evidence so compelling that it would change the outcome of the hearing.

If the Petitioner did not agree with the rehearing determination, she needed to file an appeal with the circuit court under Wis. Stats. §227.53(1), as she was instructed in the Rehearing Request Order that was issued on May 21, 2015.

Instead, the Petitioner filed a new appeal with the Division of Hearings and Appeals, but there is no statutory authority under which I can hold a hearing in matter that has already been decided.

I note that the Petitioner argues in her appeal that \$16.00 is simply not enough for her to buy groceries; that she thinks the change in the law is unfair, and that she wants consideration given to the fact that she suffers from lupus.

No one is trying to tell the Petitioner that \$16.00 is enough of a supplement to her income to ensure she is able to obtain adequate nutrition. \$16.00 is only what the law allows in the Petitioner's case.

Administrative Law Judges do not have the authority to make decisions based upon what a party believes is fair. They are required to follow the law as it is written.¹

If the Petitioner thinks the changes in the law are unfair, she needs to contact her legislator.

Petitioner should note that there are no provisions in the law that allow an increase in FoodShare benefits, because a person has a chronic illness. However, if the Petitioner incurs out of pocket medical expenses that exceed \$35.00 per month, she should report them to the agency to see if those expenses can be used as an income deduction, which would, in turn, increase her FoodShare benefits.

CONCLUSIONS OF LAW

There is no jurisdiction to hear Petitioner's appeal, because the matter was already addressed in a decision issued on April 30, 2015.

THEREFORE, it is **ORDERED**

That the petition 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.

¹ (See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). "No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944); see also, *Neis v. Education Board of Randolph School*, 128 Wis.2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985).

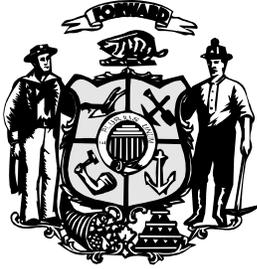
APPEAL TO COURT

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 26th day of
June, 2015.

\sMayumi M. Ishii
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 June 26, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability