



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/166468

PRELIMINARY RECITALS

Pursuant to a petition filed June 04, 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 August 26, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly calculated the petitioner's monthly FS benefits effective February 11, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Simone Johnson
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The petitioner was receiving FoodShare (FS) benefits prior to February 11, 2015.
3. On January 19, 2015 the agency sent the petitioner a notice stating that her FS benefits were ending effective February 1, 2015 because she failed to complete her benefit renewal.

4. On January 27, 2015 the petitioner reapplied for FS benefits. On January 30, 2015 the agency sent the petitioner a notice stating that her application was denied because she had still not completed her renewal for her FS benefits to continue.
5. The petitioner's FS benefits terminated effective February 1, 2015.
6. On February 11, 2015 the petitioner reapplied for FS benefits. On February 12, 2015 the agency sent the petitioner a notice stating that she would receive \$10.00 in FS benefits for the remainder of February, and then \$16.00 per month effective March 1, 2015.
7. The petitioner's monthly gross income is \$836.78 from social security. She pays \$236.00 in rent. All of her utilities with the exception of her phone are included in her rent.
8. On June 4, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

### DISCUSSION

In calculating the petitioner's FS allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires the county to start with gross income, deducting a limited number of identified deductions from that income to calculate the adjusted income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a household size of 1 is \$155, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

I reviewed the agency's calculations in this case, and the calculations are correct. In addition, the petitioner did not dispute the calculations. The petitioner's main concern was how she was treated by the department. That is not at issue in this appeal.

The petitioner did receive a reduction of her monthly FS benefits effective February 11, 2015. The reason for this reduction is the passing and implementation of the 2014 Farm Bill. Previously the petitioner received an excess shelter deduction because everyone receiving food shares qualified for the \$450 Heating Standard Utility Allowance. It did matter whether or not the person was responsible for his or her utilities because the Wisconsin Department of Administration (DOA) issued an annual energy assistance payment of \$1 to all FS households who were not already receiving energy assistance.

The 2014 Farm Bill changed Wisconsin's practice of allowing all FS households to take the maximum utility allowance. The 2014 Farm Bill requires a household to have a received a WHEAP or energy assistance payment of greater than \$20 to receive the HSUA of \$450. 7 U.S.C. 2014(e)(6)(C)(ii)(I) Therefore, "households that have not received WHEAP will receive the appropriate utility standard based on the utility obligation(s) incurred by the household." *DHS Operations Memo 14-16 Amended*. In this case the petitioner did not receive WHEAP and her only monthly utility obligation is a phone. This caused a significant reduction in the petitioner's monthly FS benefits.

I have reviewed whether or not this appeal is timely. The Federal Regulations state the following with regard to appeal deadlines:

1. A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days.

A State / agency action includes a refusal to restore benefits lost more than 90-days, but less than 1 year prior to the recipient's request to restore the benefits.

2. "In addition, at any time within a certification period, a household may request a fair hearing to dispute its current level of benefits."

7 CFR 273.15(g)

The Food Share Wisconsin Handbook echoes the Federal Regulations stating:

1. A fair hearing must be requested within 90 days from the first day that a specific agency action impacted their FoodShare benefits.
2. A fair hearing may be requested at any time within a certification period if a food unit disagrees with their current amount of Food Share benefits.

*FoodShare Wisconsin Handbook (FSH) §6.4.1.1*

The petitioner is within the same certification period, and disagrees with the amount of FS benefits that she continues to receive. Although this amount began effective February 11, 2015, the record supports that this amount continued through the petitioner's request for fair hearing making her request for fair hearing timely.

### **CONCLUSIONS OF LAW**

The agency correctly calculated the petitioner's monthly FS benefits effective February 11, 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.

### **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 28th day of August, 2015

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\sCorinne Balter  
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 August 28, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability