



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/167097

PRELIMINARY RECITALS

Pursuant to a petition filed July 07, 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 12, 2015, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner’s appeal is timely and whether an error has been made in the calculation of his FoodShare allotment.

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: Belinda Brown
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest a decrease in his FoodShare allotment. It was reduced from \$125.00 to \$16.00 effective March 1, 2015.
3. Petitioner’s household size is 1.

4. The agency determined Petitioner's household income to be \$1238.00 per month from Social Security retirement benefits.
5. Petitioner was given credit for the following expenses in the FoodShare allotment calculation: a standard deduction of \$155.00, a child support deduction of \$400.00 and shelter allowance of \$58.50 based on rent of \$400.00 per month.
6. This appeal was filed on July 7, 2015.

DISCUSSION

The Division of Hearings and Appeals can only make a decision on the merits of a matter if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FoodShare must be filed within 90 days of the date of that action. 7 CFR, §273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case. Here Petitioner's appeal was filed 129 days after the effective date of the reduction in his FoodShare so is not timely. Nonetheless, viewed in a light most favorable to Petitioner, he contends that agency has not correctly calculated his child support payment. Errors in the allotment determination can be corrected. *FoodShare Wisconsin Handbook (FSH)*, §7.4.1.1. I will describe the FoodShare allotment determination formula.

To receive FoodShare benefits a household must have income below gross and net income limits, typically 200% of the Federal Poverty Level. 200% of the FPL for a household of 1 is \$1946.00 See *FoodShare Wisconsin Handbook (FSH)*, §8.1.1.1. The gross income test does not apply where a household has an elderly, blind or disabled (EBD) member but if income is in excess of 200% of the FPL, a net income test applies. 7 Code of Federal Regulations (CFR), §273.9(b); *FoodShare Wisconsin Handbook (FSH)*, § 1.1.4. The agency must budget all income of the FoodShare household, including all earned and unearned income. 7 CFR § 273.9(b); *FSH*, § 4.3.1.

The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH*, §4.1.1. Once income is gross household income is determined eligibility and, if eligible, allotment levels are determined. Because Petitioner is an EBD household and his gross income is less than 200% of the Federal Poverty level he does not have a net income test. The following formula is applied:

- (1) a standard deduction - which currently is \$155 per month for a household of 1-3 persons, 7 CFR § 273.9(d)(1);
- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 CFR § 273.9(d)(2);
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 CFR § 273.9(d)(3);
- (4) dependent care deduction for child care expenses, 7 CFR § 273.9(d)(4); and
- (5) shelter and utility expenses deduction – the utility expense requires that a household have an actual utility obligation and is a standard deduction based on that obligation (\$446.00 where there is a heat obligation – here there is none); the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 CFR § 273.9(d)(5). There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH*, §§ 4.6.7.3 and 8.1.3.

Petitioner indicated that he owes in excess of \$800.00 in child support processing fees and would like that deducted. There is no deduction for fees allowed in the FoodShare calculation. See *FSH*, §§4.6.5.2 and 4.6.5.3. In reviewing the current calculation of Petitioner's FoodShare allotment I do not find any errors in the final allotment determination. Given Petitioner's income and deductions, the correct monthly FoodShare allotment is \$16.00. *FSH*, §8.1.2.

As a final note, a reported change in income or expenses can affect the FoodShare allotment in the month following the report of the change so if any of Petitioner's financial circumstances change (as an example – additional medical expenses) he should report the change as soon as possible. *FSH*, §6.1.3.3.

CONCLUSIONS OF LAW

That Petitioner's appeal is not timely as to the March 2015 reduction in FoodShare and he has not demonstrated any error in the calculations by the agency.

THEREFORE, it is

ORDERED

That this 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 15th day of September, 2015

\sDavid D. Fleming
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 September 15, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability