



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/167464

PRELIMINARY RECITALS

Pursuant to a petition filed July 20, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on August 25, 2015, at Racine, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly determined the Petitioner's FS benefits.

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: Rhonda Kraemer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. On December 8, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would decrease from \$146/month to \$142/month effective January 1, 2015. The

notice also informed her of the right to appeal the agency determination by filing a request for a hearing with the Division of Hearings and Appeals no later than April 2, 2015.

3. On May 15, 2015, the Petitioner completed a FS renewal. She reported gross household income of \$666/month. She has shelter expenses of \$147.33. She pays separately for utilities.
4. On May 18, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would remain at \$142/month based on the income and shelter expenses reported in her renewal.
5. On July 20, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., sec. 273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case.

In this case, after the Petitioner's renewal in May, 2015, her FS benefits remained the same. There was no negative action at that time by the agency concerning her case. However, at the hearing, the Petitioner testified that she disagrees with the reduction she had in benefits to \$142/month. That reduction occurred effective January 1, 2015. Per the notice issued on December 8, 2014, the Petitioner had 90 days or until April 2, 2015 to file an appeal regarding that action. The petitioner's appeal was filed 200 days after the date of the action. Thus, the Petitioner's appeal is untimely with regard to the action taken by the agency effective January 1, 2015 when her benefits were reduced from \$146 to \$142.

Though there was no subsequent negative agency action, I did review the agency's most recent action effective June 1, 2015 to determine if the Petitioner's FS benefits were properly calculated by the agency. In determining the amount of FS to be issued each month, the agency must budget all of the recipient's nonexempt income, including earned and unearned 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 Handbook (FSH), § 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); FSH, § 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); FSH, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH, § 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); FSH, § 4.6.7.

In this case, I find no error in the calculation of the Petitioner's FS benefits. The Petitioner received the maximum utility standard. She received a deduction for her property tax expense and homeowner's insurance. Based on the evidence presented, I conclude that the Petitioner's appeal is untimely with regard to the reduction in benefits from \$146/month to \$142/month effective January 1, 2015. The agency properly calculated the Petitioner's benefits effective June 1, 2015 as \$142/month.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely with regard to the reduction in benefits from \$146/month to \$142/month effective January 1, 2015. The agency properly calculated the Petitioner's benefits effective June 1, 2015 as \$142/month.

THEREFORE, it is

ORDERED

That the Petitioner's 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 17th day of September, 2015

\sDebra Bursinger
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 17, 2015.

Kenosha County Human Service Department
Division of Health Care Access and Accountability