



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/167517

PRELIMINARY RECITALS

Pursuant to a petition filed July 23, 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 September 09, 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:

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 the determination of the amount of his FoodShare allotment. Petitioner’s FoodShare allotment is \$16.00. He has received this allotment since February 2015.
3. Petitioner was sent a Notice of Decision dated January 13, 2015 that informed Petitioner that his FoodShare allotment would be reduced effective February 1, 2015 from \$96.00 to \$16.00. That notice

was sent to Petitioner at the above address. It does contain appeal instructions, noting a May 4, 2015 appeal deadline.

4. The reason for the reduction is that Federal law concerning utility expenses changed.
5. This appeal was filed on July 23, 2015.
6. Petitioner's household size is 1.
7. In the calculation of Petitioner's FoodShare allotment the agency used income of \$836.78. In the calculation the following amounts were deducted from income: a standard deduction of \$155.00 and a shelter deduction of \$356.11 based on rent of \$251.00 and a utility allowance of \$30.00 for a phone.

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 well after the May 4, 2015 appeal deadline 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 though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4*. The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1*. The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1*. If income fluctuates, an averaged is used to determine income over the remainder of the certification period. *FSH, §1.2.4.2*. A certification period is typically 12 months. *FSH, §2.2.1*.

If a household passes the gross income test, the following deductions are applied (*FSH, at § 4.6*):

- (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 (\$30 where it is phone only); 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*.

While Petitioner does not believe that this FoodShare allotment is correct or sufficient; in reviewing the calculation of Petitioner's FoodShare allotment, I find no errors. The change here is related to a reduction in the allowable utility allowance. It was a standard \$446.00 but was that was changed in 2014. See Operations Memo # DHS 14-16, issued 4/18/14 and effective 4/28/14.

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 February 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 19th day of October, 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 October 19, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability