



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed August 03, 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 01, 2015, at Milwaukee, Wisconsin.

The petitioners, [REDACTED], and her husband, [REDACTED] (married 12-18-2013), agreed to the consolidation of their five cases so that those cases were addressed during the September 1, 2015 hearings in the following cases: a) [REDACTED] in [REDACTED] FOP-[REDACTED] and CCO-[REDACTED] and b) [REDACTED] in FOP-[REDACTED] and CCO-[REDACTED] MES representative, [REDACTED], submitted a detailed closing argument regarding the three FS cases of petitioner and her husband. Neither [REDACTED] nor [REDACTED] submitted any responsive closing argument to DHA.

After the petitioner's appearance for her four cases above, the last hearing was for [REDACTED]. This ALJ instructed petitioner that the hearing for the FS reduction case would be rather brief. However, after about 5 minutes of the hearing, petitioner without permission or providing any good cause simply got up and left the hearing room. The MES representative, Ms. [REDACTED], continued and completed the Department's case regarding the reduction of petitioner's FS effective August 1, 2015.

The issue for determination is whether the Department correctly reduced the petitioner's FoodShare (FS) benefits from \$649 to \$220 effective August 1, 2015, due to an increase in household numbers to five persons (adding petitioner's husband and his income) and an increase in household earned and unearned income.

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: [REDACTED], IMM advanced

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

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resided with her three children at [REDACTED]
2. The father of petitioner's three children is [REDACTED]. He was released from prison on December 10, 2013.
3. [REDACTED] applied for FS on December 16, 2013 claiming to be homeless and on his own in his FS household. Exhibits B2 and A1. At the time of that application, [REDACTED] was the father of petitioner's child, TJ. Exhibit G.
4. The petitioner married [REDACTED] on December 18, 2013. Exhibit I.
5. The petitioner has received FoodShare (FS) benefits for many years. Exhibit A1.
6. As of December, 2013, the petitioner was claiming separate FoodShare (FS) and Child Care (CC) Cares # [REDACTED] and [REDACTED]'s Care [REDACTED].
7. The petitioner and [REDACTED] failed to timely report to the agency their December 18, 2013 marriage and failed to timely report that they were residing together since his release from incarceration on December 10, 2013.
8. The petitioner received W-2 benefits up to the time that her husband was added to her FS case.
9. [REDACTED]'s FS benefits should have closed by the end of December, 2013, and he should have been added to the FS household of petitioner's FS case.
10. [REDACTED] failed to report in his reviews of December, 2013, June, 2014, and December, 2014 that he resided with his wife and his income. Exhibit B1.
11. [REDACTED] failed to report in her reviews of September, 2013, February, 2014, and July, 2014 and January, 2015 that her husband resided in her household and his income. Exhibit C2.
12. The petitioner falsely stated in her February 21, 2014 and July 14, 2014 FS renewal applications that she was single (not married), and failed to report her husband residing in her household. Exhibits J and K.
13. On November 14, 2014, petitioner added her husband to her FS case. Exhibit C4.
14. During May, 2015, the Office of the Inspector General discovered that petitioner failed to report accurate household composition (her husband in her residence) and his employment/income since. OIG also discovered that petitioner incorrectly received Caretaker Supplement (CTS) benefits that she was ineligible to receive due to [REDACTED] residing in her home.
15. Neither petitioner nor [REDACTED] timely reported to the agency that [REDACTED] had the following employment: a) [REDACTED] – April 28, 2014 to November 21, 2014; b) [REDACTED] during December, 2014 and February, 2015; and c) [REDACTED] – March 25, 2015 to April, 17, 2015. Exhibit Q.

16. By June, 2014, [REDACTED] was earning enough that petitioner and he were required to report the increase in their FS household's income because it affected petitioner's FS income eligibility or FS benefits. Exhibit Q.
17. The following evidence supported that [REDACTED] resided in the petitioner's household since his December 10, 2013 release from incarceration: a) many petitioner postings on her Facebook page that her husband was residing with her household (Exhibit H); b) statement the petitioner and her husband made on a television show called, "the Steve Wilkos Show" regarding residing together; c) payroll records for [REDACTED] which indicate the petitioner's homes address (Ex. Q); d) employment verification and day care record which indicate they had the same home phone number for their emergency contact (Exhibit Q); e) their marriage certificate which confirmed their marriage on December 18, 2013; and f) the birth of their twins during the overpayment period.
18. During June and July, 2015, petitioner was receiving FS benefits in the amount of \$649.
19. On June 10, 2015, the petitioner's husband was added to her FS case resulting in a FS household of 5 (petitioner, her three children and her husband).
20. Based upon petitioner's inaccurate reporting to MES, the agency calculated that petitioner's household had gross income of \$294 for July, 2015 resulting in FS benefits of \$649. When that gross income was corrected and adjusted for adding petitioner's husband and his income, petitioner's gross income was \$2,373 for August, 2015. That increase in petitioner's household income resulted in the reduction of her FS benefits effective August, 2015.
21. MES sent a June 24, 2015 Notice of decision to the petitioner stating that her FS benefits would be reduced from \$649 to \$220 effective August 1, 2015, due to an increase in household earned and unearned income.

DISCUSSION

In determining the amount of FS to be issued each month, the county **must budget all income of the FS household, including all earned and unearned income.** 7 C.F.R. §273.9(b). From the gross household income, certain deductions as discussed in the *FoodShare Wisconsin Handbook*, §4.6 are allowed: (1) standard deduction - which currently is \$134 per month for all households. 7 C.F.R. §273.9(d) (1); (2) earned income deduction - which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d) (2); (3) medical expense deduction - for medical expenses exceeding \$35 in a month for an elderly or disabled person. 7 C.F.R. §273.9(d) (3); (4) dependent care deduction for child care expenses. 7 C.F.R. §273.9(d) (4); and (5) shelter expenses deduction - 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). The maximum FS allotment amounts, based on household size, are listed at *FoodShare Wisconsin Handbook*, §8.1.7. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wi.gov/fsh/>.

During the September 1, 2015 hearing, the county agency representative provided testimony and documentation regarding the calculation of the August 1, 2015 reduction in petitioner's FS benefits. MES representative, [REDACTED] explained and documented the reasons for the reduction of petitioner's FS as of August, 2015. See above Findings of Fact especially #18 - #21. As stated in the above Preliminary Recitals,

After the petitioner's appearance for her four cases above, the last hearing was for [REDACTED]. This ALJ instructed petitioner that the hearing for the FS reduction case would be rather brief. However, after about 5 minutes of the hearing, petitioner without permission or providing any good cause simply got up and left the hearing room. The MES representative, Ms. [REDACTED], continued and completed the Department's case regarding the reduction of petitioner's FS effective August 1, 2015.

As a result, the petitioner provided no testimony or evidence to refute the Department's FS reduction case in the above-captioned case. In reviewing MES' calculation of petitioner's FS benefits based upon FS policy and law, I find no error. Accordingly, for the above reasons, I conclude that the county agency correctly reduced the petitioner's FoodShare (FS) benefits from \$649 to \$220 effective August 1, 2015, due to an increase in household numbers to five persons (adding petitioner's husband and his income) and an increase in household earned and unearned income.

CONCLUSIONS OF LAW

The Department correctly reduced the petitioner's FoodShare (FS) benefits from \$649 to \$220 effective August 1, 2015, due to increase in FS household numbers to five persons (adding petitioner's husband) and an increase in household earned and unearned income.

THEREFORE, it is ORDERED

The petition for review herein be and the same is hereby 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 Madison,
Wisconsin, this 20th day of November, 2015

\sGary M. Wolkstein
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 November 20, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability