



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/168533

PRELIMINARY RECITALS

Pursuant to a petition filed September 02, 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 telephonic hearing was held on October 06, 2015.

The issue for determination is whether the agency has issued petitioner all of the FS to which she is entitled for August 2015.

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: Pang Thao-Xiong, IM Specialist Adv.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On July 23, 2015 the agency issued a notice of decision to the petitioner stating that effective August 1, 2015 her FS would be \$18. Exhibit 2.
3. Petitioner's rent in August was \$806. Exhibit 1.
4. Petitioner's only utility expense in August was her telephone.

DISCUSSION

FS benefits are calculated pursuant to 7 C.F.R. §273.9. The maximum FS allotment amounts, based on household size, are listed at *FoodShare Wisconsin Handbook*, §8.1.2. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

In calculating the petitioner's allotment, the agency must follow the procedure set by the federal FS regulations, which is restated in the *FS Handbook*. In determining the amount of FS to be issued each month, the agency 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, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6.1 are allowed: a standard deduction, an earned income deduction, a medical expenses deduction, a child support payment deduction, a dependent care expense deduction, and a shelter expense deduction. Some FS groups are not allowed a deduction for some expenses and some expenses are not always deducted in full. Petitioner received the standard deduction and the shelter expense deduction. See Exhibit 1 (FS budget for August).

Petitioner's concern at hearing was the decrease in FS to \$18. The reason the FS decreased was due in part to a mass change in policy regarding utility deductions. The policy in question relates to Operations Memo #14-16, available online at <https://www.dhs.wisconsin.gov/dhcaa/memos/14-16amended2.pdf>. As noted in the policy, this change in policy was to take place for FS renewals processed on or after April 28, 2014 as it did here. Of particular relevance here, it states, "Households that have not received WHEAP will receive the appropriate utility standard based on the utility obligation(s) incurred by the household at the food unit's current residence...The Phone Utility Allowance (PUA), if obligated to pay, or actually paying for only a telephone, including cellular phones." *Id*; see also *FoodShare Handbook*, §4.6.7.3. Because petitioner is only paying for the phone utility, she gets the PUA, which is \$30. *Id*. She was previously receiving a higher utility deduction under the old policy, which allowed her to receive a higher FS allotment in the past.

The other reason that petitioner's FS decreased in August was due to her rent. There was no dispute that her rent was \$806 for August at her Residential Care Apartment Complex (RCAC). See *FoodShare Handbook*, §4.6.7.2. The agency had previously been budgeting her rent incorrectly at \$1026, which is the room and board rate at the RCAC. See Exhibit 1 and 4. I also provide the petitioner the following Handbook provision for her information:

Residential Care Apartment Complexes (RCAC)

An RCAC is a place where 5 or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, including a stove, an individual bathroom, and sleeping and living areas. Residents of RCAC facilities that offer optional meal services, separately from the cost of care can be treated as single apartment dwelling residents and be nonfinancially eligible for FS.

Residents of these facilities that do not have these services separate from the cost of care may be eligible if the resident meets the eligibility criteria for a group living arrangement ([3.2.1.5](#)). Residents are ineligible for FS if

they choose a meal plan provided by the facility that provides a majority, more than 50%, of their daily meals.

Every tenant has a signed “Service Agreement” with the RCAC provider which lists the services the tenant is to receive from the facility (including meals) and the fees charged for those services. Charges for meals should be separately identified in this agreement. Both the resident and the facility have copies of the service agreement (contract). However, most RCAC’s do not have a separate lease for individual tenants.

The name and address of the facility on the service agreement can also be used to verify that the residence is an RCAC by checking against the Department’s [Residential Care Apartment Complex Directory](#).

As of April 21, 2005, at application and review, individuals residing in an RCAC will be tested according to the new RCAC policy. The ES worker must determine and verify the meal situation for each RCAC resident that requests FS.

To correctly process a case in [CWW](#) - Current Demographics Page

- If the individual’s meals are purchased from the RCAC separately from their cost of care, code the individual as <01> on the CWW Current Demographics page.
- If the individual’s meals are included in his/her cost of care, code the individual as <25>, (ineligible unless blind or disabled) on the CWW Current Demographics page.

Example 11: Maria lives in an RCAC. Her service agreement shows she has no meals included in her cost of care, but she does have the option to select from various meal plans. She has opted to prepare all of her meals herself and not purchase any meal plan from the RCAC. She would be non-financially eligible for FS. The Current Demographics page would be coded as 01.

Example 12: John also lives in the same RCAC. He has opted to purchase one of the dinner meal plans from the RCAC. Because the meal plan is purchased separately from his cost of care and the plan provides less than 50% of his daily meals, he would also be non-financially eligible for FS. The CWW Current Demographics page would be coded as 01.

Example 13: Francis lives in an RCAC that does not offer the option to buy meal plans separately from the cost of care. Her meals are included in the monthly cost of care. She does not meet the non-financial eligibility criteria for FS unless she is blind or disabled.

The agency presented the corrected budget screens to show how it determined petitioner's FS for August. I have reviewed the information and find no errors in the computations. Petitioner provided no evidence to show that the computations were incorrect. However, she was understandably confused with the reduction given the mass change on the PUA and the agency's previous budgeting errors. Petitioner hung up on the hearing before this administrative law judge closed the hearing, and therefore no other evidence was adduced from the petitioner. However, her testimony prior to hanging up was that her RCAC plan provides for three meals a day. Thus, under this policy she would not even have been eligible for the FS she received in August at all, however, I will not disturb the agency's issuance of \$18 in FS.

I remind the petitioner that if her income decreases, has more medical expenses, or has other changes to her household, she must report and verify that to the agency so her FS can be redetermined.

I add, assuming petitioner feels that this is not a fair determination, that I do not have equitable powers and cannot deviate from what law and policy dictate. See Oneida County v. Converse, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). In other words, I cannot change the outcome here because it would be fair.

CONCLUSIONS OF LAW

The agency has issued petitioner all of the FS to which she is entitled for August 2015.

THEREFORE, it is

ORDERED

The petition for review herein 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 21st day of October, 2015

\sKelly Cochrane
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 21, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability