



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/168574

PRELIMINARY RECITALS

Pursuant to a petition filed September 10, 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 correctly determined the petitioner's FS allotment for September 2015.

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: 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 August 18, the petitioner reported that her foster daughter moved in with her on August 16, 2015.

3. On August 24, 2015 the agency issued a notice to petitioner stating that her FS would increase to \$190 because of the “new person add”.
4. Prior to issuing the August 24, 2015 notice, the FS agency had issued FS for the foster daughter on her biological mother’s FS case.

DISCUSSION

FoodShare regulations state that a household is composed of a “group of individuals who live together and customarily purchase food and prepare meals together for home consumption.” See 7 C.F.R. §273.1(a). Wisconsin’s policy is clear in requiring that the child cannot be a member of more than one FS group in the same month. The policy is found in the *FoodShare Wisconsin Handbook*, §3.4.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>, and provides the following guidance in these situations:

A person cannot be a member of more than 1 food unit and 1 *FS* group in the same month except residents of shelters for battered women and children.

Persons moving to Wisconsin from another state are not eligible to receive duplicate FS benefits. States typically issue benefits on either a calendar or fiscal month. A fiscal month cycle provides benefits from a date in one month to a corresponding date in the next month. California (Fresno), Massachusetts, Nevada and South Dakota issue on a fiscal month cycle. Illinois issues benefits by calendar month (first day through the last day of the month) and by fiscal month (16th through 15th). Wisconsin issues on a calendar month cycle.

FS Handbook, §3.4.1; see also 7 [CFR](#) 273.3(a).

The FS agency budgets FS prospectively on a calendar month cycle. See *FS Handbook*, §§4.1.1. Thus, September’s FS had already been determined and issued for the foster daughter on her biological mother’s FS case prior to the change report from petitioner. There is no exception to this policy.

The agency admitted the error in issuing the notice to petitioner saying that her FS would increase for September and provided the correct budget showing the correct amount of \$38 in FS for her for September. Petitioner agreed at hearing that she understood the issue, but had been confused given the number of notices issued to her with varying information.

Having no evidence to the contrary, I must find that the agency properly determined that the correct amount of FS for petitioner was \$38 for September 2015.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency properly determined that the correct amount of FS for petitioner was \$38 for September 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 2nd day of November, 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 November 2, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability