



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/169698

PRELIMINARY RECITALS

Pursuant to a petition filed October 26, 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 November 19, 2015.

The issue for determination is whether the agency correctly calculated petitioner's FS effective December 1, 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: Jose Silvestre, 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. Petitioner has previously received FS as a household of 3.
3. On October 23, 2015 the petitioner reported to the FS agency that her son was no longer living in her household.

4. On October 26, 2015 the agency issued a notice of decision to petitioner stating that effective December 1, 2015 her FS would be reduced to \$45. This was due to the removal of one person from the household, and thus now being a 2-person household.
5. Petitioner's household's gross monthly unearned income totals \$1653.56. She pays rent in the amount of \$750 and pays utilities.

### DISCUSSION

FS benefits are calculated pursuant to 7 C.F.R. §273.9. FS eligibility is based upon financial and nonfinancial factors. For the nonfinancial factors, eligibility for FS is determined by gathering certain information about household members. Households consist of all persons living in or temporarily absent from the same residence. See *FS Handbook*, §3.3.1.1, available online at <http://www.emhandbooks.wi.gov/fsh/>. The maximum FS allotment amounts, based on household size, are listed at *FoodShare Wisconsin Handbook*, §8.1.2.

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 2. The standard deduction is a set amount that is given to all households based on household size. For a household of 1-3 persons, the deduction is \$155. See *FoodShare Handbook*, §8.1.3. The utility deduction is governed by policy as well. That policy states that FS households that have received a Wisconsin Home Energy Assistance Program (WHEAP) payment in the current month or within the past 12 months will receive the Heating Standard Utility Allowance (HSUA) as their utility deduction. See Operations Memo #14-16, available online at <https://www.dhs.wisconsin.gov/dhcaa/memos/14-16amended2.pdf>. Households that have not received WHEAP will receive the utility deduction based on the utility obligation(s) incurred by the household at the food unit's current residence. For instance, a household will receive the HSUA, if obligated to pay, or actually paying for any heating source, including but not limited to gas, electric, wood, propane, etc. In this case, the petitioner received the HSUA, which is the greatest utility deduction given, in the amount of \$458. See *FoodShare Handbook*, §8.1.3.

Petitioner's concern at hearing was the decrease in FS to \$45 as it is insufficient to meet her needs. The agency presented the budget screens to show how it determined petitioner's FS. I have reviewed the information and find no errors in the computations. Petitioner provided no information to show that they were incorrect either. I cannot change the policy or law based on any fairness argument, as 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.

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

### CONCLUSIONS OF LAW

The agency correctly calculated petitioner's FS effective December 1, 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 24th day of November, 2015

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\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 24, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability