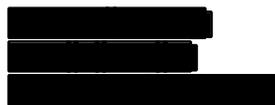




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOO - 174874

PRELIMINARY RECITALS

Pursuant to a petition filed on June 9, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS), a hearing was held on July 12, 2016, by telephone from Madison, Wisconsin.

The issues for determination are (1) whether petitioner's appeal of a December, 2015 FS allotment determination is timely; and (2) whether the respondent correctly determined petitioner's FS allotment effective June, 2016.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [Redacted]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner has an ongoing FS case and is the primary person in an FS household of 7.

3. On November 23, 2015, respondent notified petitioner in writing that her FS benefits would be reduced from \$1,022.00 to \$845.00 monthly, effective December 1, 2015.
4. On April 11, 2016, petitioner was informed that she needed to complete her FS renewal By May 31, 2016. The renewal was not completed timely, and the FS benefits closed as of June 1, 2016.
5. Petitioner reapplied on June 9, 2016, and was approved. June benefits were pro-rated in the amount of \$494.00, with ongoing benefits calculated in the amount of \$675.00.
6. Petitioner filed an appeal with the Division of Hearings and Appeals on June 9, 2016.

DISCUSSION

I. Whether petitioner's appeal of the December, 2015, FS allotment is timely.

FoodShare recipients must appeal negative decisions within 90 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it.

Petitioner was notified of a reduction in her FS benefits in November, 2015, that became effective December 1, 2015. Because she disagrees with the amount of FoodShare that she was allotted last year, that award is considered a negative action by the county agency. To file a valid appeal of that reduction, she would have to have done so within 90 days of December 1, 2015. She filed her only appeal on June 9, 2016, more than 180 days after the change went into effect. Based upon this, I must dismiss the appeal of the reduction of FS in December, 2016.

II. Whether the respondent correctly determined petitioner's FS allotment effective June, 2016.

In calculating the petitioner's FS allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook (FSWH)*. The federal rule requires the county to start with gross income, deducting a limited number of identified deductions from that income to calculate the adjusted income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

I have reviewed the testimony pertaining to respondent's calculations, and have found no error. The petitioner questioned some of the information used to determine her son's wages, and I would recommend that she provide the respondent with any updated employment information in her possession, as that could affect her FS allotment.

CONCLUSIONS OF LAW

1. The petitioner's appeal of the December, 2015, FS allotment reduction is untimely.
2. The petitioner failed to rebut the respondent's assertion that it correctly calculated the petitioner's FS benefits effective June 9, 2016.

THEREFORE, it is

ORDERED

That this petition 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, **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 8th day of August, 2016

\s _____
Peter McCombs
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 August 8, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability