



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/168660

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 14, 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 February 10, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined the petitioner's monthly FoodShare (FS) allotment effective October 1, 2015.

A hearing was previously scheduled for October 22, 2015. The petitioner appeared at that hearing. On the record the petitioner stated that he wished to withdraw his appeal. On October 27, 2015 the Division of Hearings and Appeals issued a written order dismissing the petitioner's appeal based upon his oral withdrawal of his appeal. On November 18, 2015 the Division of Hearings and Appeals received the petitioner's Request for a Rehearing. Although the petitioner did not state a reason for his rehearing request, based upon the fact that the petitioner's request was timely, and that he had withdrawn his original request, I granted the rehearing.

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

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He is the only person in his household.
2. On September 8, 2015 the agency sent the petitioner a notice stating that his monthly FS benefits would decrease from \$24 to \$16 effective October 1, 2015.
3. On September 14, 2015 the Division of Hearings and Appeal received the petitioner's Request for Fair Hearing.
4. The petitioner's monthly gross income is \$835.78 from social security. His monthly rent is \$137.00. Prior to October 1, 2015 the petitioner informed the agency that he was responsible for his electric and phone bill.

### DISCUSSION

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*. The federal rule requires that the county 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). The Standard Deduction for a household size of 1 is \$155, per *FS Wisconsin Handbook*, 8.1.3. 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 from the income after deductions if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

Part of the Excess Shelter Deduction calculation is a set utility allowance. *FS Wisconsin Handbook*, 4.6.7.3. This set allowance is based on the utilities that a person is actually responsible for paying. *Id.* If a person is responsible for his or her heat, then the recipient is eligible for the Heating and Standard Utility Allowance. *Id.* If the person is only responsible for electric plus one other utility, for example a phone, then the recipient is eligible for the limited utility allowance. *Id.* This allowance is less than the heating standard. *Id.*

Previously, the Wisconsin Department of Administration (DOA) issued an annual energy assistance payment of \$1 to all FS households who were not already receiving energy assistance. This allowed Wisconsin to grant all FS households the Heating Standard Utility Allowance. The actual utility obligation did not matter. The 2014 Farm Bill changed this practice, and now the agency bases the allowance on the utilities a person is responsible to pay.

In this case the petitioner's FS benefits were originally reduced because of the 2014 Farm Bill and the cost of living adjustment. At the original hearing, the petitioner appeared with his family care case worker. The petitioner receives services through the family care program. The petitioner spoke to income maintenance, and withdrew his appeal on the record.

The petitioner requested a rehearing, which I granted. At the rehearing, the agency demonstrated that the calculations were correct based upon the information that they and the petitioner provided. The petitioner showed his electric bills. The bills did not demonstrate that the petitioner had electric heat. The petitioner testified that he had electric heat. He felt that his FS should be greater because he was paying for his heat. The petitioner had not provided this information to the agency prior to his request for fair hearing. Following this rehearing, the worker was going to follow-up with the petitioner's family care case worker to determine whether there were any additional deductions that the petitioner would qualify for that would increase his FS the month following the petitioner's rehearing.

Following the hearing, the worker sent the petitioner a letter. I was copied on the letter. The letter informed the petitioner that he was receiving \$73 in monthly FS benefits effective October 1, 2015. The reason he was receiving that amount of monthly FS benefits was because the agency had been crediting him with the full heating standard allowance effective October 1, 2015. The worker states that this is the reason the petitioner originally withdrew his request for fair hearing. Thus, there remains no issue for my determination. The only issue the petitioner presented on appeal was that he was not getting the full heating allowance. That is no longer issue, and agency's calculations are correct.

### **CONCLUSIONS OF LAW**

The agency correctly calculated the petitioner's monthly FS benefits effective October 1, 2015.

**THEREFORE, it is** **ORDERED**

That the 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, 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).

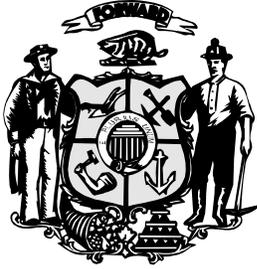
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 12th day of February, 2016

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\sCorinne Balter  
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 February 12, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability