



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[Redacted]  
[Redacted]  
Milwaukee, WI 53210

|

[Redacted]

FOO/170680

PRELIMINARY RECITALS

Pursuant to a petition filed December 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 hearing was held on February 02, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner’s FoodShare allotment has been correctly calculated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]  
[Redacted]  
[Redacted]

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Respondent:

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

By: [Redacted]  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to question a reduction of his FoodShare allotment. It was reduced from \$194.00 in November 2015 to \$16.00 in December 2015.
3. Petitioner submitted a six month report form in early November 2015. In processing that the agency learned of Petitioner’s employment through a temp service and concluded that Petitioner was earning \$10.00 per hour and averaging 22.5 hours per week for total income of \$967.50 per month (\$10 x 22.5 x 4.3 wks/month). This was based on about 1-2 weeks of work. A state wage match shows, however, that Petitioner works intermittently and that his hourly rate varies by the

job. As an example of hours, records show that Petitioner worked 22 hours for the pay date of November 1, 2015 but nothing in the rest of November or early December 2015.

4. The agency used the following deductions in determining Petitioner's FoodShare allotment - a standard deduction of \$155.00 and an earned income deduction of 20%. He reported no shelter expense.
5. Petitioner's FoodShare household consists of himself.

### DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

The gross income limit for a household of 1 was \$1962.00 for late 2015. *FSH, §8.1.1.1, Release 14-03.* Petitioner's gross income is less than this.

If a household passes the gross income test, the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$165 per month for a household of 4 persons, *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction – the utility expense requires that a household have an actual utility obligation and is a standard deduction based on that obligation (e.g., \$30 where it is phone only); the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).* There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.3 and 8.1.3.*

It should also be noted that changes in income and expenses and that a change reported in one month cannot affect benefits until the next month. *FSH, §6.1.3.3.*

Further and applicable here, while 30 days of income is typically sufficient to be an indicator of income available to a household, if income fluctuates an average is used:

You may use income received during the last 30 days as an indicator of the income that is and will be available to the household during the certification period, unless that income does not accurately reflect changes in income that have occurred or are anticipated to occur.

...

If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. To average widely fluctuating income, use the household's anticipated income including fluctuations anticipated over the certification period. In any case, make every attempt to accurately verify prospective income and clearly document the reasoning for the prospective income estimate.  
*FoodShare Wisconsin Handbook, §1.2.4.2.*

I conclude that Petitioner's FoodShare allotment must be recalculated as his income fluctuates.

**CONCLUSIONS OF LAW**

That Petitioner's FoodShare case was incorrectly closed because of income in excess of FoodShare income limits.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency with instructions to redetermine Petitioner's FoodShare allotment for the month of December 2015 and forward to the present. Any supplemental benefits must be issued within 10 days of the date of this Decision. A new Notice of Decision must be issued and Petitioner may file a new appeal if he does not believe the new calculations are correct.

**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 23rd day of February, 2016

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\sDavid D. Fleming  
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 23, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability