



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOO - 175047

PRELIMINARY RECITALS

Pursuant to a petition filed on June 17, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by Milwaukee Enrollment Services regarding FoodShare benefits (FS), a hearing was held on July 13, 2016, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's appeal of the March 2016 closure of her FoodShare case is timely and whether Milwaukee Enrollment Services (the agency) correctly calculated the Petitioner's FoodShare benefits, effective June 2016 going forward.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

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

By: [REDACTED], HSPC, Sr.
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. On December 21, 2015, the agency sent the Petitioner a reminder that she needed to complete a Six Month Report Form to continue receiving benefits. (Exhibit 2, pgs. 29-30)

2. For the month of February 2016, the Petitioner received \$107.00 in FoodShare benefits. (Exhibit 2, pg. 5)
3. On January 12, 2016, the Petitioner contacted the agency to report her son, [REDACTED] was no longer in the home. The Petitioner indicated she was still receiving child support payments for him and that he was receiving social security benefits, for which she was the payee. (Exhibit 2, pg. 8; testimony of the Petitioner.)
4. On January 13, 2016, the agency sent the Petitioner a Notice of Proof needed requesting verification of "Amount received per month" by January 22, 2016. (Exhibit 2, pgs. 31-34)
5. On January 25, 2016, the agency sent the Petitioner the Six Month Report Form with instructions for filling it out. The notice indicated that it needed to be returned to the agency by February 5, 2016. (Exhibit 2, pgs. 35-47)
6. Also on January 25, 2016, the agency sent the Petitioner a notice that her FoodShare case was closing for failure to provide requested verifications. (Exhibit 1, pgs. 29-34)
7. On February 3, 2016, the Petitioner provided verification that [REDACTED] was receiving \$191 per month in Social Security Income. Petitioner is the payee for [REDACTED] (Exhibit 2, pg. 8; testimony of Petitioner)
8. On February 4, 2016, the agency sent the Petitioner a notice indicating that her FoodShare benefits would be \$16.00 per month, effective March 1, 2016. In determining this allotment, the agency included [REDACTED] SSI benefits as "other income" for the Petitioner. (Exhibit 1, pgs. 22-26; Exhibit 2, pgs. 48-54)
9. On February 17, 2016, the agency sent the Petitioner a notice, indicating that her FoodShare benefits would be ending March 1, 2016, because she had not completed her six-month report form. (Exhibit 1, pgs. 27-28; Exhibit 2, pgs. 55-58)
10. Petitioner did not contact the agency again, until May 27, 2016, when she re-applied for FoodShare benefits. (Exhibit 2, pg. 8)
11. On May 31, 2016, the agency sent the Petitioner a notice indicating that effective June 1, 2016, she would be eligible for benefits in the amount of \$16.00 per month. The agency again counted the [REDACTED] \$191 SSI benefit as other income for the Petitioner. (Exhibit 1, pgs. 16-21; Exhibit 2, pgs. 68-73)
12. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 17, 2016 (Exhibit 1)
13. Petitioner has a household of two. (Exhibit 2, pg. 87)
14. At the time of her May application, the Petitioner was paying rent in the amount of \$525.00 per month and had a heating expense. (Id.; testimony of Petitioner)
15. Petitioner receives \$318 per month in child support for her child, [REDACTED] (Exhibit 1, pg. 49)
16. [REDACTED] receives \$191.00 per month in social security surviving child benefits. (Exhibit 2, pg. 14)

17. Petitioner's gross Social Security Disability benefit is \$975.80 per month. (Exhibit 1, pgs. 54-58)
18. On June 3, 2016, the Social Security Administration (SSA) deducted \$365.40 for Medicare Premiums due for April, May and June 2016 (\$121.80 x 3 months). The SSA indicated that thereafter, it would be withholding \$121.80¹ per month for premiums from the Petitioner's check so she would be receiving \$854.00 per month (\$975.80 - \$121.80 = \$854.00). (Exhibit 1, pgs. 46 and 56)
19. On June 22, 2016, the agency sent the Petitioner a notice indicating that she qualified for the QMB program, beginning March 1, 2016. (Exhibit 2, pg. 82)

DISCUSSION

The March Closure of Petitioner's Case

Petitioner received \$107 in benefits for the month of February 2016. Although the agency initially determined the Petitioner would receive \$16.00 in FoodShare benefits for the month of March 2016, the Petitioner did not receive that allotment, because her case closed effective March 1, 2016, due to the lack of a Six Month Report Form.

Petitioner asserts that the agency acted incorrectly and that she should receive backdated benefits to March 1, 2016. However, an appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., § 273.15(g). So, if Petitioner wanted to contest the loss of her benefits, beginning March 1, 2016, she needed to file her appeal by May 30, 2016 – though the February 17, 2016 notice of case closure gave her until May 31, 2016, to file her appeal.

The Petitioner did not file her appeal until June 17, 2016. As such, her appeal is untimely and there is no jurisdiction to review the merits of Petitioner's appeal of the March 2016 closure of her FoodShare case.

Petitioner's Benefits for June 2016 Going Forward

Petitioner also appealed the agency's determination of her FoodShare benefits for June 2016 going forward. Without question, this case is a bit more complicated than most.

Eligibility and benefit calculations are based on prospectively budgeted monthly income using estimated amounts. *FoodShare Wisconsin Handbook (FSH) §4.1.1* County agencies are directed to "only include income actually **available to the group.**" *FSH § 4.1.1 Emphasis added.*

To be categorically eligible, most households/food units must have income at or below 200% of the Federal Poverty Level (FPL). *FSH §4.2.1.1; 7 CFR 273.2(j)(2)*. However, "Food units that include an elderly, blind or disabled member ... have no gross income limit, but must have net income that does not exceed 100% FPL and countable assets that do not exceed \$3,250." *FSH §4.2.1.5*

For households with two people, 100% of FPL is \$1,328 per month. *FSH §8.1.1.1*

The Petitioner argues that the agency did not correctly calculate her FoodShare allotment, after she reapplied for benefits in May 2016. Petitioner's primary dispute is with the agency's decision to include [REDACTED] Social Security income in Petitioner's household income, even though he does not live with the

¹ Beginning in 2016, Medicare Part B premiums are \$121.80 per month. <https://www.medicare.gov/your-medicare-costs/part-b-costs/part-b-costs.html>

Petitioner. The agency included [REDACTED] income, because the Petitioner is his representative payee and his check is deposited into her bank account.

However, [REDACTED] Social Security benefits belong to him and may not be used for the benefit of Petitioner or her other child. Social Security income must be available for the beneficiary’s immediate support and the Representative Payee has a legal duty to make it available for the person’s support. “A payee must use benefits to provide for the beneficiary's **current needs** such as food, clothing, housing, medical care and personal comfort items, or for reasonably foreseeable needs.” *Emphasis added.* Social Security Program Operations Manual - POMS§ GN 602.0

If Petitioner used [REDACTED] social security income for anything other than his benefit, she would be in violation of the law. Consequently, [REDACTED] social security income is not available to Petitioner’s household and should not be counted when determining Petitioner’s household income.

Totaling the Petitioner’s Gross household income we have:

\$975.80	Petitioner’s SSI Disability Income
+\$191	[REDACTED] Surviving Child benefits
+\$318.00	child support for [REDACTED]
<hr/>	
\$1484.80	Total Gross Income

To determine net income, the following deductions are applied to gross income (*FSH, at § 4.6*):

(1) a standard deduction –

This is \$155 per month for a household of 1-3 people,
 \$168 for four people
 \$197 for five people
 \$226 for six or more people

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)*;

Petitioner has no earned income, so this does not apply to her.

(3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;

For June 2016, the Petitioner had an out of pocket medical expense of \$365.40 for Medicare premiums, so her deduction for June would be: \$365.40-\$35 = \$330.40

Thereafter, she was expected to have an expense of \$121.80 per month for Medicare premiums, which would result in a FoodShare deduction of \$121.80 - \$35.00 = \$86.80.

On June 22, 2016, after adverse action, the agency determined that Petitioner was entitled to QMB premium assistance, backdated to March 1, 2016. So, that would affect her FoodShare benefits, beginning August 1, 2016. As of that date, she should no longer receive that medical expense deduction.

If Petitioner is reimbursed by the SSA in a non-recurring lump sum, that money would be counted as an asset, not as income per FSH §4.5.5. If Petitioner is reimbursed by the SSA in installments, the income is still disregarded per FSH §4.3.4.

- (4) dependent care deduction for child care expenses, 7 CFR § 273.9(d)(4); and

Petitioner did not report any dependent care expenses.

- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 CFR § 273.9(d)(5).

The heating standard utility allowance (HSUA) is \$458 per month.

There is a cap of \$504.00 on the shelter cost deduction, *unless* a household, like Petitioner’s, has an elderly, blind or disabled member.²

It is undisputed that the Petitioner is entitled to the full HSUA (Exhibit 2, pg. 87)

FSH, §§ 4.6.7.1 and 8.1.3.

Applying the deductions allowed under FSH § 4.6 to Petitioner’s gross income we have the following net income calculation for **June 2016**:

Gross Income	\$1484.80	Rent	\$525.00 ³
No Earned Income Deduction		HSUA	+\$458.00
Standard Deduction	-\$155.00	50% Net income	-\$499.70
Medical Expenses exceeding \$35	-\$330.40		
No Dependent Care Expenses		Excess Shelter Expense	\$483.30
<hr/>			
Net Income	\$999.40		
Excess Shelter Expense	-\$483.30		
<hr/>			
Total Net Income	\$516.10		

Households of two, with net income of \$516.10, are entitled to FoodShare benefits in the amount of \$202.00. *FSH § 8.1.2*

² The term ‘disabled’ is a term with a definition as to the FoodShare program:

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: [SSA](#), [MA](#), [SSI](#) or SSI related MA, Railroad Retirement Board ([RRB](#)).

FSH, §3.8.1.1.

³ Petitioner indicated that her rent went up in June to \$545, but there is no verification of this in the documents provided by the Petitioner. If Petitioner wants the increase in rent accounted for, she will have to file a change report and provide verification of the change.

Applying the deductions allowed under FSH, at § 4.6 to Petitioner’s gross income we have the following net income calculation for **July 2016**:

Gross Income	\$1484.80	Rent	\$525.00
No Earned Income Deduction		HSUA	+\$458.00
Standard Deduction	-\$155.00	50% Net income	-\$621.50
Medical Expenses exceeding \$35	-\$86.80		
No Dependent Care Expenses			
		<hr/>	<hr/>
		Excess Shelter Expense	\$361.50
<hr/>			
Net Income	\$1243.00		
Excess Shelter Expense	-\$361.50		
<hr/>			
Total Net Income	\$881.50		

Households of two, with net income of \$881.50 are entitled to FoodShare benefits in the amount of \$92.00. *FSH § 8.1.2*

Applying the deductions allowed under FSH, at § 4.6 to Petitioner’s gross income we have the following net income calculation for **August 2016** going forward:

Gross Income	\$1484.80	Rent	\$525.00
No Earned Income Deduction		HSUA	+\$458.00
Standard Deduction	-\$155.00	50% Net income	-\$664.90
No Medical Expenses exceeding \$35			
No Dependent Care Expenses			
		<hr/>	<hr/>
		Excess Shelter Expense	\$318.10
<hr/>			
Net Income	\$1329.80		
Excess Shelter Expense	-\$318.10		
<hr/>			
Total Net Income	\$1011.70		

Households of two, with net income of \$1011.70 are entitled to FoodShare benefits in the amount of \$53.00 per month. *FSH § 8.1.2*

CONCLUSIONS OF LAW

With regard to the March 2016 closure of Petitioner’s case, Petitioner’s appeal is untimely and there is no jurisdiction to review the merits of her appeal.

With regard to the agency’s determination of Petitioner’s benefits beginning June 2016, the agency did not correctly determine Petitioner’s benefits.

THEREFORE, it is ORDERED

For the month of June 2016, the agency shall issue to Petitioner a total of \$202.00 in benefits.

For the month of July 2016, the agency shall issue to Petitioner a total of \$92.00 in benefits.

For the month of August 2016 going forward, the agency shall issue to the Petitioner \$53.00 per month in benefits.

The agency shall take all administrative steps to complete this task within ten days of this decision.

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 Milwaukee,
Wisconsin, this 11th day of August, 2016

\s _____
Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 11, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability