

3. Petitioner completed a FoodShare renewal in late June 2016.
4. Petitioner receives \$1018.00 in Social Security retirement benefits. From this is deducted \$460.00 for an outstanding child support obligation. For reasons not clear the FoodShare budgeting system auto populated the net amount of Petitioner's Social Security but he was still credited with the child support expense; i.e., essentially Petitioner was credited with the child support deduction twice. He was also credited with a \$458.00 utility expense but no longer has that expense.
5. In determining the new FoodShare allotment the agency used Petitioner's gross Social Security retirement income of \$1018.00. Expenses budgeted for Petitioner were the support obligation of \$460.00 and a shelter deduction of \$116.70 based on a rent expense of \$400.00. He also receives the standard deduction of \$155.00.
6. In July 2016 the agency learned that Petitioner has a phone expense; he was given credit for that expense and his FoodShare increased to \$68.00 as of August 1, 2016.
7. Petitioner's FoodShare group consists of 1 person – Petitioner 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 one is \$1946. *FSH, §8.1.1.1.* 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 \$155 per month for a household of 1-3 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 (\$446.00 where there is a heat obligation); 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.*

Having reviewed the agency calculation – I find no errors. The Division of Hearings and Appeals can only apply the Federal law establishing and regulating the FoodShare program; it cannot change the law.

The previous incorrect budgeting based on the auto populated Social Security amount did create an overpayment but it is not to be recovered: "... Do not establish a claim if Social Security or SSI updates from data exchange are incorrect. These updates cannot be recovered or found in error because the information comes from a trusted third party source." *FSH, §7.3.1.9.*

As a final note, it is helpful to keep in mind that, a reported change in income or expenses can affect the FoodShare allotment in the month following the report of the change so Petitioner should report and document any future changes as soon as possible. *FSH, §6.1.3.3.*

CONCLUSIONS OF LAW

That the available evidence indicates that the agency correctly determined Petitioner’s FoodShare allotment.

THEREFORE, it is ORDERED

That this appeal 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 Milwaukee,
Wisconsin, this 9th day of September, 2016

\s _____
David 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 September 9, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability