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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/142395

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 16, 2012, 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 August 15, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined the amount of Petitioner's FoodShare allotment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 537 03

By: Belinda Bridges

Milwaukee Enrollment Services  
1220 W Vliet St  
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's FoodShare benefits were discontinued effective May 1, 2012 after an increase in income as Petitioner began to receive Social Security retirement benefits. He requested a hearing to challenge that discontinuance. A hearing was held on May 16, 2012 and a decision issued by

the undersigned on June 18, 2012. That decision concluded that the agency had potentially erred in its determination as slightly different eligibility rules apply with a person over age 60.

3. The determination was made and the agency concluded that Petitioner's FoodShare allotment should be \$17 per month and Petitioner was so notified. Petitioner requested this hearing to contest the agency determination of the amount of that FoodShare allotment.
4. In its new determination of Petitioner's FoodShare eligibility and allotment level the agency used house, income and expense information provided by the parties at the May 16, 2012 hearing. Those figures were noted in the findings of that decision:

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5. Petitioner's household size is one. Per the agency budgeting screen he is 62 years of age.

6. Petitioner began receiving Social Security retirement benefits in May 2012 in the amount of \$865.00 per month. Petitioner is employed. The original agency decision to discontinue his benefits was based upon income figures that were subsequently revised. The revised figures came from paystubs submitted by Petitioner for the month of April 2012. The pay stubs for April indicate that Petitioner had gross income of \$646.20 on one paycheck and \$279.19 on the other paycheck. The earned income for April totaled \$925.39 for an average of \$231.35 per week. With a multiplier of 4.3 weeks per month, earned income totals \$994.79 per month. Added to Petitioner's Social Security benefit of \$865 per month, his total gross income is \$1859.79.

7. Petitioner is given the following deductions: shelter costs above \$663.00, a utility allowance of \$444.00, an earned income deduction, a standard deduction of \$147.00 and excess medical expenses of \$324.81. These were not disputed.

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### DISCUSSION

The factors that go into the budgeting calculations for FoodShare program were noted in the June 18, 2012 decision. They are repeated here.

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 a member over age 60. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), §§ 1.1.4 and 4.2.1.5.* 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.* Further, for earned income that is received biweekly, the agency is directed to develop a biweekly average, and then multiply that figure by 2.15 to account for three-paycheck months. For weekly income, the multiplier is 4.3. *7 CFR §273.10(c)(2).*

As Petitioner is over age 60 there is no gross income test for Petitioner but he must have net income under \$908.00 and assets under \$3250.00. *FSH, §4.2.1.5.*

The following deductions are applied to arrive at net income ( *FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$147 per month for a household of 1 person, *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 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 \$459.00 on the shelter cost deduction unless a household has an elderly, blind or disabled member. FSH, §§ 4.6.7.1 and 8.1.3.

In reviewing the calculations that resulted in the \$17 per month FoodShare allotment (see exhibit #3), I do not see any error by the agency.

In a submission to the Division of Hearings and Appeals prior to the instant hearing, Petitioner did note some additional expenses; specifically, a monthly \$50 payment for a second mortgage, home owners insurance, a telephone expense and dental insurance premium. He also noted that he recently purchased eyeglasses. Finally, he stated that he receives energy assistance. A telephone expense is covered by the standard utility allowance. As for the other expenses, Petitioner should provide documentation of those expenses to the agency. Once he does so, there is the potential that can affect a FoodShare benefit in the month after the month of report. FSH, §6.1.3.3. The agency will also have to determine whether or not energy assistance is counted as income.

**CONCLUSIONS OF LAW**

That the agency correctly determined the amount of Petitioner's FoodShare allotment.

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

That's appeal is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 14th day of September, 2012

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David D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals

c: Milwaukee Enrollment Services - email  
Department of Health Services - email



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 14, 2012.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability