



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]

DECISION

FOO/142979

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 08, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on September 17, 2012, at Fond Du Lac, Wisconsin.

The issue for determination is whether the Department correctly determined the petitioner's FS for September, 2012.

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 53703

By: Molly Aird

Fond Du Lac County Department of Social Services  
87 Vincent Street  
Fond Du Lac, WI 54935 -4595

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. The petitioner and his wife are both disabled. Petitioner's wife has pension/retirement income of \$99.41 per month, and Social Security Income of \$1,323.00 each month. Exhibit G. Petitioner has received FS benefits since at least September of 2011. Exhibit 3.

3. On August 3, 2012, the Department issued written notice to the petitioner advising that, because petitioner's medical bill had decreased, more of petitioner's household income was being counted, with the result that the petitioner's FS would be reduced to \$29.00 effective September 1, 2011.

### DISCUSSION

The petitioner questions the correctness of the calculation of his FS net income/allotment amount for September, 2012, onward. The petitioner's household gross income amount and type are not in dispute. The budgeting calculations here were performed prospectively. Prospective budgeting should reflect what the petitioner is likely to receive, on average, each month. *FS Wisconsin Handbook (FSWH)*, 4.1.1, viewable online at [www.emhandbooks.wi.gov/fsh/](http://www.emhandbooks.wi.gov/fsh/).

In calculating the petitioner's September net income/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, rather than net, income, and allow only a limited number of identified deductions from that 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 case with two people was set at \$147, per *FS Wisconsin Handbook*, 8.1.3. Twenty percent of any earned income is then subtracted as the Earned Income Deduction; that deduction was correctly not given here. A Dependent Care Deduction is also taken if petitioner incurs day care expenses in order to go to work, an Excess Medical Expense Deduction is subtracted for an elderly or disabled person's allowable medical expenses that exceed \$35 per month, and child support paid out garners a deduction. There is only a record of the excess medical expenses here. 7 C.F.R. §273.9(d)(3).

The petitioner provided several medical bills in support of the Excess Medical Expense Deduction. Unfortunately, the Department found that several of the bills had been submitted previously, and therefore could not be used again. See, Exhibit J. Other bills were not counted due to lacking dates of service or specification of the amount presently due and owing after Medicare/Medicaid had made payment. See, *Medicaid Eligibility Handbook*, §§20.3.6 and 24.7.2. The petitioner did not substantially dispute the unusable nature of many of the submitted bills, and acknowledged his understanding of the Department's explanation of the manner by which his counted income increased as a result of the change in the application of medical bill deductions.

The correct allotment for a two person household with counted income of \$1,124.11 is **\$29**. *FS Wisconsin Handbook*, 8.1.2. The agency was therefore correct in the re-calculation of the September allotment.

### CONCLUSIONS OF LAW

The agency correctly determined a \$29.00 FS allotment for the petitioner commencing in September, 2012, after considering the medical bills that he furnished prior to this September 17, 2012 hearing.

**THEREFORE, it is**

**ORDERED**

That the petition 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 Madison,  
Wisconsin, this 1st day of October, 2012

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Peter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals

c: Fond Du Lac County Department of Social 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 October 1, 2012.

Fond Du Lac County Department of Social Services  
Division of Health Care Access and Accountability