



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/143170

PRELIMINARY RECITALS

Pursuant to a petition filed August 16, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 2, 2012, at Madison, Wisconsin.

The issue for determination is whether the agency correctly determined the amount of the petitioner's FS from July through October, 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: Ryan Grimes

Dane County Department of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. The petitioner, who is disabled, heads a household of five (self, wife, 3 minor children). The wife and children moved to Wisconsin between December 2011 and February 2012, and filed an application for Foodshare. The petitioner was added to the case during May 2012.

3. The household was issued an FS allotment of \$651 for *June* 2012. That allotment amount is not in dispute here.
4. The Social Security database showed the \$249 amounts for two children by June 2012, so that income was included in computing *July* 2012 FS benefits (\$272). The petitioner contacted the agency on August 16, complaining that his children do not receive \$249 monthly. This prompted the agency to check Social Security records and discover that each of the three children receives \$166 monthly.
5. For *August* 2012, the agency issued FS of \$200. The August allotment was based on the following monthly income: petitioner's Social Security of \$913.40, wife's gross earnings of \$1,045.52, child S's Social Security of \$249, and child N's Social Security of \$249 (no income listed for child A). FS-deductible expenses were listed as \$675 in rent, a utility allowance, and uncovered monthly medical expenses consisting of \$35.10 in prescription charges (co-pays etc.), \$4.60 in Medicare drug coverage premiums, and \$99.90 in Medicare premiums. See Notice dated 7/23/2012.
6. For *September* 2012, the agency issued FS of \$126, followed by a \$74 supplement. In arriving at the final result of \$200, the agency used the same deductible expenses. It also used the same income for the petitioner and his wife. However, it changed the children's monthly income to: child S's Social Security of \$166, child N's Social Security of \$166, and child A's Social Security of \$166.
7. For *October* 2012, the agency issued FS of \$157. In arriving at this result, the agency used the same figures as it did for September, except (1) that the petitioner's gross income increased from \$913.40 to \$1,013.40, and (2) that \$35.10 in prescription costs were dropped.
8. Post-hearing, the agency computed monthly FS allotments of \$634 for *November* 2012 through February 2013, if there are no further changes in the case. In computing the \$634 amount, the agency budgeted unpaid medical bills presented by the petitioner at hearing from WalMart Vision, St. Mary's, Madison Emergency Physicians, and UW Health. The agency also used a rent expense of \$775, and unreimbursed child care of \$200 weekly. It also used increased income of \$1,013.40 for the petitioner, and decreased earned income for his spouse of \$1,032.26, effective October 1, 2012.
9. The petitioner's rent increased to \$775 effective August 3, 2012. His first report of the rent increase to the agency was at the October 2 hearing, so the change cannot affect his benefits until November 2012.

DISCUSSION

The petitioner questions the correctness of the calculation of his FS allotment amounts; due to federal 90-day restriction on how far back from his appeal filing date that I can review his benefits, the allotments from June 2012 forward will be reviewed. The petitioner's gross income is not in dispute. The parties were in disagreement over the amount received by his children, but that has been corrected going forward. 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.wisconsin.gov/fsh/. 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 C.F.R. §273.10(c)(2).

As an example, in calculating the petitioner's October 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 five persons is currently set at \$187 (eff. 10/1/12), 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 given here for the petitioner’s wife. A Dependent Care Deduction is also taken if she 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 no record of the child support expense here. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of that income. 7 C.F.R. §273.9(d)(6)(ii). Based on a \$675 shelter cost plus the \$444 heating utility standard, the petitioner’s shelter costs totaled \$1,119. This exceeded half of the adjusted income (\$1,060.46), by \$58.54, so the \$58.54 was deducted in the allotment calculation.

At hearing, the petitioner established that his unpaid medical bills exceed the budgeted amount, and those bills will be reflected in the allotments from November 2012 through January 2013. Similarly, at hearing, he identified child care expenses. Based on an October 2 reporting date, this expense will be reflected in FS allotment from November 2012 forward. I cannot credit the petitioner with these expenses for the allotments issued prior to October 2. However, I can credit the petitioner for the unexplained dropping of his \$35.10 monthly prescription costs from the October allotment.

Thus, the October, 2012, allotment calculation should have looked like this:

Gross income	2556.65 (1,045.52+1,013.40+498)
Minus Earned Inc. Deduction	- 209.10
Minus Excess Medical	- 39.70
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-187.00</u>
Adjusted Income	2120.85
Minus Shelter Deduction	<u>- 58.54</u>
Net Income	2062.31

The correct allotment for five persons with net income of \$2,062 was **\$174** in October, 2012. *FS Wisconsin Handbook*, 8.1.2, p.18.

CONCLUSIONS OF LAW

1. The Department correctly determined the petitioner’s FS allotments for June through September, 2012.
2. The Department incorrectly determined the petitioner’s FS allotment for October 2012, which should have been \$174 rather than \$157.
3. The Department correctly determined the petitioner’s FS allotment to be \$634 for November 2012.

THEREFORE, it is

ORDERED

That the petition is *remanded* to the county agency with instructions to supplement the petitioner’s October 2012 FS amount to reach a total benefit of \$174. This action shall be taken within 10 days of the date of this decision. In all other respects, 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 15th day of October, 2012

Nancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
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 October 15, 2012.

Dane County Department of Human Services
Division of Health Care Access and Accountability