



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/143191

PRELIMINARY RECITALS

Pursuant to a petition filed August 16, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on September 17, 2012, at Waukesha, Wisconsin.

The issue for determination is whether Waukesha County Health and Human Services (the agency) correctly determined Petitioner's FoodShare allotment effective September 1, 2012.

NOTE: The record was held open to give the agency an opportunity to submit an Employer Verification of Earnings Form and a printout showing the unemployment insurance benefits received by Petitioner. The documents have been marked collectively as Exhibit 5.

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: Aina Bromberek
Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On August 3, 2012, the agency sent Petitioner a notice of negative action indicating that as of September 1, 2012, her FoodShare benefits would be reduced from \$200 per month to \$36 per month. (Exhibit 2, pgs. 2)
3. The agency actually disbursed \$26 in FoodShare benefits to Petitioner for September 2012, because it withheld \$10 to satisfy an alleged overpayment of FoodShare benefits that occurred in August 2012. (Exhibit 2, pg. 8)
4. Petitioner filed a request for fair hearing that was received by the Division on August 17, 2012. (Exhibit 1)
5. Petitioner's assistance group size is one. She is 61 years old and as such, is considered elderly for FoodShare purposes. (Petitioner's testimony; FoodShare Wisconsin Handbook)
6. Petitioner pays \$488 per month in rent. (Petitioner's testimony; Exhibit 2, pg. 5)
7. Petitioner received unemployment insurance benefits (UIB) in the amount of \$100.00 per week during July and August 2012. (Petitioner's testimony; Exhibit 5)
8. During the school year, Petitioner works 22.50 per week at a rate of \$9.46 per hour; Petitioner is paid bi-weekly. (Exhibit 5)
9. Petitioner does not work during the summer break. In 2012, summer break began on June 8, 2012; Petitioner received her last pay check of the school year on June 29, 2012. Petitioner received the first pay check of the 2012-2013 school year on September 15, 2012. (Exhibit 5)

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 a member over age 60. *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.* Thus, in this case, income from August 2012 was used to determine the allotment for September 2012 onward.

Once a household passes the gross income test the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently was \$147 per month for a household of 1 during the time in question, but was raised to \$149, effective October 1, 2012. *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 was a cap of \$459.00 on the shelter cost deduction, at the time in question, but effective October 1, 2012 The cap was raised to \$469. There is no cap on the shelter/utility deduction, if a household has an elderly, blind or disabled member. *FSH, §§ 4.6.7.1 and 8.1.3.*

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

3.8.1.1 EBD Introduction

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.

Petitioner’s earned income in August 2012 was zero. Her unearned income in August 2012 was \$430 per month:

\$100 UIB per week x 4.3 average weeks per month = \$430 per month.

Petitioner’s allotment should have been calculated as follows:

\$430 gross income	\$488 rent
-\$147 standard deduction	- \$141.50 (50% of \$283 net income)
-\$0 earned income deduction	
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\$283 net income	\$346.50 shelter/utility deduction
-\$346.00 shelter/utility deduction	
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\$0 net income	

A person with zero net income is eligible for \$200 in benefits. *FSH, §8.1.2*

CONCLUSIONS OF LAW

The agency incorrectly calculated Petitioner’s FoodShare allotment for September 2012. The September 2012 FoodShare allotment should have been \$200.

THEREFORE, it is ORDERED

That the agency disburse FoodShare benefits to Petitioner equaling \$200 for the month of September 2012. The agency shall take steps to do this within ten days of this decision.

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 3rd day of October, 2012.

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

c: Waukesha County Health and Human Services - email
Department of Health Services - email



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The preceding decision was sent to the following parties on October 3, 2012.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability