



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/143238

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 17, 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 9, 2012, at Madison, Wisconsin. The hearing record was held open for 10 days for a submission from the petitioner, which was received.

The issue for determination is whether the Department correctly denied the petitioner's July 2012 FS online application.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: No appearance

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
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, age 55, applied online for FS for her household of four persons (self, husband, 2 grandchildren) on July 23, 2012. No household member is elderly or disabled. On the application, she declared that her husband is employed by the [REDACTED] and that she is self-employed, with no income amount listed.
3. No written verification request was made to the petitioner from July 23 – August 13, 2012. On August 13, 2012, The Capital Consortium issued written notice of denial of the application to the petitioner. The basis for denial of FS to the petitioner and her spouse was excess income. The basis for denial of FS for the two grandchildren was that they “are already getting this benefit as part of another case.”
4. The household income identified by the Consortium (a Richland County worker, XRI147) included the husband’s wages of \$1,592 every other week, which was correct. However, it also included correct monthly self-employment income for the petitioner of \$0.91, and *incorrect* earned income for the petitioner of \$1,176.80 monthly from the State of Wisconsin. Finally, the notice identified a \$220 Kinship Care payment for one child in July, and \$440 in Kinship Care payments (2 children) for August 2012. Based on this information, the Consortium computed net household income of \$4,616.08 for July, and \$5,048.08 for August, which exceeds even the FS gross income limit for two persons (currently \$2,522).
5. The petitioner has not worked for the State of Wisconsin for some time. The household has interest income that averages \$41.57 monthly.
6. Also on August 13, 2012, the Department issued a notice to the petitioner advising that her “case has been assigned to the agency above.” The only agency identified was the Capital Consortium. By the date of hearing, the petitioner’s case was “in the custody of” the Dane County agency, although no one at the Dane County agency had ever acted on the FS case.
7. The two grandchildren were on their mother’s FS case in July and August, 2012. A person cannot be in more than one FS household/unit in a given month.

### DISCUSSION

The Department clearly erred in including the petitioner’s past State of Wisconsin income in calculating FS eligibility for July and August, 2012. However, the Department was correct to compute July and August eligibility for a household of *two* persons, rather than *four*, because the children’s mother had not yet reported the children as out of her FS household. Kinship Care received during July and August is not counted because the two children were not in the petitioner’s FS unit during those months. *FoodShare Wisconsin Handbook (FSWH)*, §3.4.1, 4.3.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

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, 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).

The Department erred by including non-existent earned income for the petitioner. The gross monthly income in July and August should have been husband’s wages of \$3,184 plus petitioner’s \$0.91 plus \$41.57 in interest, for a total of \$3,226.48. Then, in calculating the petitioner’s allotments, 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 one to three persons 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 should have been \$636.98 here. 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 latter three expenses 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 \$714 shelter cost plus the \$444 heating utility standard, the petitioner's shelter costs totaled \$1,058. This did not exceed half of the adjusted income (\$1,221.25), so no excess shelter cost was deducted in the allotment calculation.

Thus, the July, 2012, allotment calculation correctly looked like this:

Gross income	3226.48
Minus Earned Inc. Deduction	- 636.98
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-147.00</u>
Adjusted Income	2442.50
Minus Shelter Deduction	<u>-000.00</u> (\$459 is the maximum)
Net Income	2442.50

The correct allotment for two persons with net income of \$2,442.50 was **zero** in July and August, 2012. *FS Wisconsin Handbook*, 8.1.2, p. 21. Therefore, denial of the petitioner's FS application for July and August 2012 due to excess income was correct, even after the incorrect State of Wisconsin income was removed.

The petitioner may re-apply at any time if her circumstances change.

**CONCLUSIONS OF LAW**

1. Denial of the petitioner's July 2012 FS application due to excess income was correct, based on gross household income of \$3,226.48 monthly.

**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, 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 26th day of October, 2012

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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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 26, 2012.

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