



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/143290

PRELIMINARY RECITALS

Pursuant to a petition filed August 21, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on September 17, 2012, at West Bend, Wisconsin.

The issue for determination is whether Petitioner's FoodShare allotment for August and September 2012 has been correctly calculated.

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: Linda Hunt

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. Petitioner filed this appeal to contest the reduction in the amount of FoodShare benefits effective August 2012.

3. Petitioner and his spouse had been receiving \$367.00 in FoodShare benefits per month back to at least October 2011. That allotment was reduced to \$100 for August but then supplemented to bring the total to \$168.00.
4. The reason for the reduction was that the agency began to include Social Security benefits for Petitioner in the allotment calculation as of August 2012.
5. Petitioner Social Security benefits have not actually been paid as of yet. Those benefits are scheduled to be paid on October 24, 2012.
6. Petitioner's spouse is employed and earning \$1876.86 per month.
7. Deductions permitted for the FoodShare program were not an issue in this case.

DISCUSSION

In this case the computer system that calculates a FoodShare allotment auto-populated the Social Security benefit that is to be received by Petitioner in late October 2012 as of August 2012. This is an error, as only income actually received is countable:

Eligibility and benefit calculations for FS are based on prospectively budgeted monthly income using estimated amounts. The income to be budgeted is identified through the interview ([2.1.3](#)) and the verification ([1.2.1](#)) process. Only include income actually available to the group. Do not budget income until the first month in which it is received. The worker must use the best-verified information available when determining the best estimate of income.

FoodShare Wisconsin Handbook (FSH), §4.1.1; also see 7 Code of Federal Regulations (CFR) §273.9.

Thus only income of Petitioner's spouse should have been used in determining the household FoodShare allotment for the months of August and September 2012. Information submitted by the agency after the hearing indicates that, with just the income of Petitioner spouse counted, the household FoodShare benefit for August and September 2012 should be \$275.00 per month.

I also note that an increase in a household's income must be reported if household income exceeds 130% of the federal poverty level for household of that size. If income is already in excess of 130% there is no need to report the change. Nonetheless, if the agency becomes aware of a change it must act on that change. *See FSH, 6.1.1.2.* Here 130% of the federal poverty level for household of two was \$1594 through September 30, 2012 and increased to \$1640 effective October 1, 2012. *See FSH, § 8.1.1.1.* Thus while Petitioner's household may not have had to report the Social Security benefit as the household income was already over the 130% mark, the agency was aware of the change and had an obligation to process the change and include it in the allotment calculation.

There is, however, another potential problem in this case. That is that Petitioner's household has received \$367.00 as its FoodShare allotment since at least October 2011 through July 2012. This is the maximum FoodShare allotment allowed for a household of two but only when the net income of the household, after deductions allowable for the FoodShare program, is zero. *FSH, §8.1.2.* In this case Petitioner's spouse has been working. The record for this case is not clear (there is no reason why it should be as this was not the issue for this case) as to whether or not allowable deductions reduced the household income to zero so as to permit a food share allotment of \$367.00 per month. I note that overissuances and underissuances may be offset:

7.3.1.3 Offsetting an Established Claim Amount

Offset an existing FS overissuance (claim) with the calculated FS underissuance (restoration) amount when both situations exist. Offset the claim against any amount that has not been restored

to the FS group. You may offset a suspended or terminated claim amount against an underissuance amount.
FSH, §7.3.1.3.

Here it is not yet clear, however, whether there was an overissuance and, if there was, what the amount of that overissuance is. Thus, at this point, there is no overissuance claim to offset the underissuance for August and September 2012. I also note that, given timeframe within which the agency must comply with an order to supplement the FoodShare benefit for Petitioner for this case, it does not have time to calculate an overissuance, issue a notice of that overissuance, permit time to appeal, conduct a hearing and have a decision issued.

For the benefit of Petitioner and spouse I note the following is a description of deductions allowable to offset income:

- (1) a standard deduction - which currently is \$149 per month for a household of 2 persons, *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.*

For FoodShare program purposes "elderly" means over age 60. *FSH, §3.8.1.*

CONCLUSIONS OF LAW

That the agency underissued FoodShare benefits for the months of August and September 2012 because it counted income not yet received by the household.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to take the steps necessary to redetermine Petitioner's FoodShare benefits for the months of August and September 2012 and to issue any supplemental benefits necessary. This must be done within 10 days of the date of the decision if it has not been done already.

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 Milwaukee,
Wisconsin, this 16th day of October, 2012

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

c: Division of Health Care Access and Accountability, DHSADHCAA@Wisconsin.gov -
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The preceding decision was sent to the following parties on October 16, 2012.

Washington County Department of Social Services
Division of Health Care Access and Accountability