



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/145520

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 26, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on December 20, 2012, at Milwaukee, Wisconsin.

The original issue for determination was whether the agency had correctly closed Petitioner's FoodShare case for lack of a six month report form but by the time of the hearing that had been corrected. As the hearing progressed it became apparent, however, that there was a potential error in the calculation of Petitioner's FoodShare allotments back to June 2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Belinda Bridges

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner was sent a notice informing him that his FS benefits were being discontinued effective November 1, 2012. The reason for the discontinuance was that Petitioner's six-month report form had allegedly not been received. He had been receiving \$16 in FS benefits per month as of June 2012 through October 2012.
3. Petitioner did submit his six-month report form as required on or about October 5, 2012 but the agency did not process it until November 30, 2012. At that point the agency determined that Petitioner was eligible for FoodShare in the amount of \$47 per month as of November 2012.
4. Petitioner receives unemployment compensation the amount of \$244 per week. At 4.3 weeks per month this is \$1049.20 per month. In determining that Petitioner was eligible for \$47 of food share benefits per month the agency gave Petitioner credit for the standard deduction of \$149, standard utility allowance of \$444 and shelter expenses of \$400.00 dollars per month.
5. When agency determined that Petitioner had been eligible for \$16 of FS benefits per month it did not allow the shelter expense of \$400 per month. It is not known whether or not he had reported the shelter expense on the application that resulted in eligibility effective June 2012 as the application was not available at the hearing.

### 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 an elderly blind or disabled member. *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.*

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

- (1) a standard deduction - which currently is \$149 per month for a household of 1 person, *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 [60 or older], blind or disabled member. *FSH, §§ 4.6.7.1 and 8.1.3.*

Also, an underissuance of FoodShare benefits may be corrected (limited to 12 months prior to the date of discovery) by the issuance of the correct amount of FS provided the underissuance was not the fault of the FS household:

Restore FS FoodShare benefits when you discover a FS group received fewer benefits than it was entitled to receive. Only restore benefits if the group did not cause the underissuance. Do not restore benefits if the underissuance occurred more than 12 months before the month the underissuance is discovered.

...

*FoodShare Wisconsin Handbook, §7.4.1.1.*

Finally, at the hearing Petitioner indicated that his unemployment compensation was scheduled to end at the end of December 2012. It was suggested that he provide that documentation to the agency as soon as possible because a change reported in one month affects the next month 's benefits. *See FSH, §6.1.3.3.*

### **CONCLUSIONS OF LAW**

That the available evidence indicates that Petitioner's FoodShare allotment was correctly determined for the months of November and December 2012 but as the hearing developed it was apparent that an error may have been made in the calculation of Petitioner's FS allotment for the period from June 2012 through October 2012.

**THEREFORE, it is**

### **ORDERED**

That this matter is remanded to the agency with instructions to take the steps necessary to review Petitioner's mid-2012 FS application along with the case notes and electronic case files to determine what, if any, shelter expenses been reported by Petitioner prior to submission of his six-month report form in October 2012. If Petitioner reported a shelter expense that was not accounted for in the determination of Petitioner's FS allotment for the period from June 2012 through October 2012 the agency must redetermine his FS allotment for that time period at issue any necessary supplemental benefits. This must be done within 10 days of the date of this decision.

In all other respects this 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 served and 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 22nd day of January, 2013

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\sDavid D. Fleming  
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 January 22, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability