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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/147014

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 28, 2013, 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 March 05, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly reduced Petitioner's FoodShare benefits from \$338.00 per month to \$38.00, effective December 1, 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  
Madison, Wisconsin 53703

By: Alma Lezama, HSPC Sr.  
Milwaukee Enrollment Services  
1220 W. Vliet St.  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 3, 2012, the agency sent Petitioner a Notice of Proof needed requesting verification of her income by October 12, 2012. (Exhibit 4)

3. On October 10, 2012, Petitioner's employer submitted an Employer Verification of Earnings (EVFE) form, indicating that Petitioner worked an average of 40 hours per week at \$13.70 per hour. (Exhibit 5)
4. The State Wage Records did not match the information in the EVFE submitted by Petitioner's employer, so the agency requested Petitioner's paystubs on or about October 12, 2012. (Exhibit 17)
5. On October 17, 2012, Petitioner's employer submitted two bi-weekly paystubs, one dated September 28, 2012, and a second one dated October 15, 2012. (Exhibit 7)
6. On November 12, 2012, the agency sent Petitioner a notice indicating that effective December 1, 2012, it was reducing her FoodShare benefits from \$338.00 per month to \$38.00 per month, based upon a monthly income of \$3042.97. (Exhibits 9 and 15)
7. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 28, 2013.
8. In February 2013, the agency re-determined Petitioner's benefits for December 1, 2012 forward, based upon an income of \$2,892.18 per month, which increased Petitioner's benefits from \$38.00 per month to \$92.00 per month. (Exhibit 10)
9. Petitioner's assistance group contains four members; none of whom are elderly, blind or disabled, as defined by the Wisconsin Medicaid program. (Testimony of Petitioner)
10. Petitioner pays rent in the amount of \$870.00 per month, in addition to utilities.

### 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); 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 –

This is \$160 per month for a household of 4, 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).*

The heating standard utility allowance (HSUA) is \$442, but Effective October 1, 2012.

Also effective October 1, 2012, the cap on the shelter cost deduction is \$469 per month, unless the 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 disputed the agency's calculation of her income, and therefore, its calculation of her allotment, because her income fluctuates.

According to Exhibit 8, when the agency determined Petitioner's December 2012 budget back on November 9, 2012, it determined her income to be \$3042.97, based upon the two paystubs dated September 28, 2012 and October 15, 2012, that are contained in Exhibit 7.

The paystubs are very difficult to read, but the agency worker wrote in certain information in red ink. Based upon the information written in red ink we have the following income calculation:

The 9/28/12 check contained the following relevant information:

10.75 hours overtime at \$20.67 per hour  
89.25 regular hours at \$13.78 per hour

The 10/15/12 check contained the following relevant information:

16 hours absence pay at \$13.78 per hour  
3.25 hours overtime at \$20.67 per hour  
69 regular hours at \$13.78 per hour

Based upon that information, Petitioner's monthly income is as follows:

16 absence hours ÷ 2 pay periods = 8 average absence hours per pay period  
8 hours x \$13.78 = \$110.24 per average pay period  
\$110.24 per average pay period x 2.15 average pay periods per month = \$237.02

10.75 OT hours + 16 OT hours = 26.75 hours  
26.75 ÷ 2 = 13.38 average overtime hours per pay period  
13.38 x \$20.67 per hour = \$276.56 per bi-weekly pay period  
\$276.56 x 2.15 average pay periods per month = \$594.60 average overtime pay

89.25 regular hours + 69 regular hours = 158.25 hours  
158.25 hours ÷ 2 = 79.13 average regular hours per pay period  
79.13 x \$13.78 = \$1090.41 per bi-weekly pay period  
\$1090.41 x 2.15 average pay periods per month = \$2344.38 average regular pay

Total average monthly pay = \$237.02 + \$594.60 + \$2344.38 = \$3176.00

It is unclear from the record how the agency determined Petitioner's income to be \$3042.97. So, either the amounts written in red ink are not correct or the agency did the math incorrectly in November 2012. Unfortunately, there is not sufficient information in the record to determine whether the information written in red ink accurately reflects the illegible information in the pay stubs. Consequently, the agency has not met its burden to prove that it correctly reduced Petitioner's FoodShare benefits effective November 1, 2012.

It should be noted that the agency re-determined Petitioner's benefits from December 2012 forward, based upon a monthly income of \$2892.18, which increased Petitioner's benefits from \$38.00 per month to \$92.00 per month. Ms. Lezama indicated that Petitioner's income was determined, based upon the State Wage Record, contained in Exhibit 6, because of possible fluctuating income. However, if one looks at Petitioner's average monthly income for the first quarter of 2012, it was \$2400.76; for the second quarter it was \$2585.26; for the third quarter, it was \$2771.55 and for the fourth quarter, which is in question, it was \$2556.77. Consequently, the agency could not have gotten the \$2892.18 amount from the State Wage Records. It is unclear where the agency got that amount.

In order to truly determine what Petitioner's FoodShare allotment for December 2012 should have been, Petitioner's paystubs from November 2012 are needed, since income is estimated prospectively. However, neither Petitioner nor the agency submitted those paystubs. Thus, the best information in the record regarding Petitioner's income would be her fourth quarter earnings, which covers October, November and December 2012. As discussed above, Petitioner's fourth quarter earnings for 2012 average out to be \$2556.77 (\$7670.31 ÷ 3). (See Exhibit 6)

Applying the deductions discussed above to Petitioner's case, we have the following net income calculation, effective December 1, 2012:

|                                    |           |                               |                 |
|------------------------------------|-----------|-------------------------------|-----------------|
| Gross Income                       | \$2556.77 | Rent                          | \$870.00        |
| 20% Earned Income Deduction        | -\$511.35 | HSU                           | \$442.00        |
| Standard Deduction                 | -\$160.00 | 50% Net income                | -\$942.71       |
| No Medical Expenses exceeding \$35 |           |                               |                 |
| No Dependent Care Expense          |           | <u>Excess Shelter Expense</u> | <u>\$369.29</u> |
| <hr/>                              |           |                               |                 |
| Net Income                         | \$1885.42 |                               |                 |
| Excess Shelter Expense             | -\$369.29 |                               |                 |
| <hr/>                              |           |                               |                 |
| Net Income                         | \$1516.13 |                               |                 |

Individuals, in a household of 4, with a net income of \$1516.13 qualify for a FoodShare allotment of \$212.00 per month. *FSH §8.1.2*. Thus, while the agency was correct that Petitioner's FoodShare allotment should have been reduced effective December 1, 2012, its calculation of the allotment was incorrect.

Petitioner asserts that her hours at work have since been reduced. If so, Petitioner must notify the agency of this change and have them re-determine her benefits. If she disagrees with that new calculation, Petitioner must file a NEW request for fair hearing.

**CONCLUSIONS OF LAW**

The agency did not correctly reduce Petitioner's FoodShare benefits effective December 1, 2012 .

**THEREFORE, it is**

**ORDERED**

That the agency issue FoodShare benefits to Petitioner in the amount of \$212.00 per month, effective December 1, 2012, if Petitioner is otherwise qualified for those benefits. The agency shall take all administrative steps necessary 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 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 12th day of March, 2013.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 12, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability