FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOO/147377

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 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 14, 2013, by telephone. The hearing record was held open for two days for submission of medical expense verification by the Department. That submission was received (Exhibits 2, 3).

The issue for determination is whether the Department correctly determined the petitioner's FS allotment for March 2013.

There appeared at that time 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:
Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The petitioner has an ongoing FS case for his household of two persons. His FS allotments from August 2012 to the present have been as follows: $127 for August, $127 for September, $128 for

October, $366 for November, $270 for December, $259 for January, $259 for February, and $21 for March. On February 18, 2013, the Department issued written notice to the petitioner advising that his FS allotment would decrease to $21 effective March 1, 2013. That notice correctly identified a mortgage expense of $1,423.06 monthly. The notice also correctly identified the household's income as being the petitioner's $1,646 in Social Security disability and his wife's $123 weekly Unemployment Compensation (UC). Finally, the notice identified medical expenses of $168.27 monthly.

3. At hearing, the petitioner reported that his medical expenses were higher than the amount shown on the February 18 notice ($119.50, after subtraction of $35 monthly threshold). The petitioner was advised to verify the medical expenses, so that the income amount could be corrected for future allotments.

4. Prior to March 2, 2013, the petitioner supplied the Department with verification of out-of-pocket medical expenses totaling $119.50: $.58 monthly from a hospitalization, $5.41 monthly for prescriptions, $1.08 monthly from Walgreens, .83 monthly from Waukesha Memorial, $26.63 from Waukesha Memorial, two $5.00 monthly bills from Prohealth Care, $1.07 monthly from Medical Center Pharm., and the $104.90 Medicare premium. As an example, to arrive at the monthly amounts, the Department took the $13.00 Walgreens bill, divided it by 12 to spread it out over 12 months, and entered $1.08 as the monthly cost. See, Exhibit 3. In reviewing this documentation, I conclude that the petitioner was not short-changed on his Excess Medical Expense deduction for March 2012; if anything, the counted medical expenses may have been overly generous due to possible over-counting.

   In comparison, the petitioner's submitted bills for his higher, $327.90 ($362.90 - $35) October excess Medical Expense deduction, were as follows: $55 hospitalization, $65 prescriptions, $13.00 Walgreens, $10 Waukesha Memorial (from June 2012), two $60 bills from Prohealth Care (from March 2012), and a $99.90 Medicare premium. See, Exhibit 2. One-time/non-monthly medical bills may be either deducted in their entirety in one month (and never used again, creating up and down allotment amounts) or divided by 12 and spread out over 12 months. *FoodShare Wisconsin Handbook*, §4.6.4.1. Thus, it would not have been correct for the Department budget the full $60 x 2 ProHealth bills again for March 2013, because the full $60 amounts were used up in October 2012.

DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for March 2013, onward. The gross income was based on the petitioner's Social Security and his wife's UC, both verified via computer database cross-matching. See, Exhibit 1A. The UC had not been counted for the November through February allotments, which caused them to be higher than the disputed March benefit. There is no dispute as to the agency's arithmetic . 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, viewable online at www.emhandbooks.wisconsin.gov/fsh/ . 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).

In calculating the petitioner's March allotment, 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 is currently set at $149, per *FS Wisconsin Handbook*, 8.1.3. Twenty percent of any earned income is then subtracted as the Earned Income Deduction; that deduction was correctly not

given here. A Dependent Care Deduction is also taken if the couple incurred 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 dependent care or child support expenses here. An Excess medical Expense Deduction was given, based on medical bills submitted. 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 $1,423.06 shelter cost plus the $442 heating utility standard, the petitioner's shelter costs totaled $ 1,865.06. This did exceed half of the adjusted income ($1,005.65), so a $859.41 excess shelter cost was deducted in the allotment calculation.

Thus, the March 2013 allotment calculation correctly looked like this:

Gross income	2279.80
Minus Earned Inc. Deduction	- 000.00
Minus Excess Medical	-119.50
Minus Dependent Care	-000.00
Minus Standard Deduction	-149.00
Adjusted Income	2011.30
Minus Shelter Deduction	-859.41
Net Income	1151.89

The correct allotment for two persons with net income of $1,151.89 was $21 in March 2013. *FS Wisconsin Handbook*, 8.1.2.

CONCLUSIONS OF LAW

1. The Department correctly determined the petitioner's FS allotment for March, 2013.

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 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 Madison,
Wisconsin, this 25th day of March, 2013

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\sNancy 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
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on March 25, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability