



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147667

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 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 27, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly determined the sufficiency of the petitioner's FS allotments for January and February, 2013.

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:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He is a one-person FS household, and he was receiving \$118 of FS in January, 2013. The agency computed his January, 2013, FS as shown in Exhibit #2, at p.11.
2. In January, 2013, the petitioner's gross household income increased from \$781.78 of SSI to \$793.78. See, Summary, Exhibit #2, p.1. The petitioner is not employed; is not the caretaker of minor children for who he pays child care expenses; and he has not reported any regular excess

out-of-pocket medical expenses to the county agency. The petitioner pays rent of \$225 per month, but he also pays \$17 to his landlord for the provision of air conditioning to his apartment.

3. In the January, 2013, FS budget, the agency used the lower SSI income amount described in Finding of Fact #2, above, and allowed the \$17 upcharge for AC services as part of his rent, i.e., a total of \$242 in rent.
4. In the February, 2013, FS budget, the agency used the new higher SSI income amount, and treated the \$17 AC expense as a utility expense.
5. The agency calculated the petitioner's FS allotment for February, 2013, as shown in Exhibit #2, at p. 12.
6. On January 8, 2013, the county agency issued a Notice to the petitioner informing him that his FS would be decreased from \$118 to \$110, effective February 1, 2013.
7. On February 25, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals. Benefits were not continued pending the hearing decision.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$149 per month for a one-person household. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FoodShare Wisconsin Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FoodShare Wisconsin Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FoodShare Wisconsin Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FoodShare Wisconsin Handbook, App. 4.6.7.

In a fair hearing concerning the sufficiency of FS issued, the burden of proof is on the Department to demonstrate that it correctly computed the petitioner's FS allotments, and the petitioner must then rebut this evidence with his own evidence showing the agency was incorrect.

The *FoodShare Wisconsin Handbook* provides for the following treatment of shelter related expenses, and defines what is allowed, and what is not. The policy states:

4.6.7.2 Allowable Shelter Expenses

Shelter expenses that are deductible include:

1. Rent
2. Home mortgage and property taxes (if not in the mortgage)
3. Countable utility expenses
4. Mobile home lot rent and loan payments
5. Insurance on the structure (if not included in the mortgage). If a household has a homeowner's insurance policy that includes insurance on the structure and household contents, but the costs cannot be separately identified, the total cost is allowable. **Note:** renter's insurance is not an allowable shelter deduction.
6. Second mortgages (regardless of what the mortgage is used for)
7. Special assessments.
8. Condominium fees or condo association fees.

Do not count as shelter or utility expenses such surcharges as pet expenses, extra garage rentals, or air conditioning surcharges. The monthly amount of rent should be taken into consideration each month when the shelter deduction is determined without regard to when the rent is actually paid. Only allow current monthly expenses. DO NOT include arrearages, late charges or discounts for early payment.

FSWH, § 4.6.7.2 (Bold font added for emphasis.)

The Wisconsin FS policy specifically prohibits treating the air conditioning surcharges as shelter expenses. I have no authority to disregard the clearly stated policy. I have reviewed the FS budget, and I can find no error. Nor has the petitioner specifically pointed to any other error. Rather, he admits the Social Security income stream counted by the agency is correct. The agency FS allotment determination must be sustained on these facts. The AC expense is not included in the shelter expense.

CONCLUSIONS OF LAW

That the county agency correctly determined the sufficiency of the petitioner's February, 2013, FS allotment is \$110.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby 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 28th day of March, 2013

\sKenneth D. Duren, Assistant Administrator
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 28, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability