



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148521

PRELIMINARY RECITALS

Pursuant to a petition filed April 4, 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 May 1, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly computed the petitioner's FS allotment for May 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: Paul Fredrickson, IM-Advanced
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]), age 70, is a resident of Milwaukee County.
2. The petitioner has an ongoing FS case as a household of one person. The petitioner previously supplied the Department with a \$20,542.10 medical bill from MFHS. That bill was used as a \$1,711.84 monthly medical expense deduction in the petitioner's FS allotment calculations for

April, May, July, September through December 2012, and January, March, April 2013. The months of June and August 2012 used a number greater than \$1,711.84 as the medical expense deduction, implying that the \$1,711.84 plus other bills were used in those months. When the \$20,542.10 medical bill is divided by \$1,711.84, the result is a 12-month “life-span” for the use of that large bill as a medical expense deduction. A bill cannot be stretched out over a period of time longer than a 1-year certification period.

3. In 2013, the petitioner has Social Security income of \$1,723 monthly. As of April 2013, his other expenses included utility payments, mortgage/assessments/insurance totaling \$831.39, and \$502.95 child support paid out.
4. On April 1, 2013, the Department issued written notice to the petitioner advising that his FS would decrease from the \$200 one-person maximum to \$16 effective May 1, 2013. In arriving at the \$16 allotment amount, the agency had ceased to subtract an excess medical expense deduction from the petitioner’s income. Also, child support payments were not subtracted from income in any of the allotment calculations in 2013, although it made no difference until May, because the petitioner was already getting the maximum allotment amount from January through April 2013.

DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for May 2013. There is no dispute that the petitioner’s gross income consists of \$1,723 monthly in Social Security. 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. 7 C.F.R. §273.10(c)(2).

In calculating the petitioner’s May 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 person 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. 7 C.F.R. §273.9(d)(3). There is no dispute that day care expenses are not being incurred. The petitioner was under the impression that his \$20,542 medical bill should continue to be deducted, but his impression was incorrect; therefore, the Excess Medical Expense Deduction was correctly set at zero. Finally, the petitioner declared in his February 2013 annual review that he pays out child support. The Department’s notices of February 14 and April 1, 2013, identify a \$502.95 support amount being paid out, but that support was not deducted from the petitioner’s income in the May allotment calculation. The failure to subtract the support in the May calculation was an error. At hearing, the agency agreed to redetermine the petitioner’s June allotment after confirming that the support payment amount was not an arrearage. I note post-hearing that the agency did subtract support paid out for the June allotment.

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 \$831.39 shelter cost plus the \$442 heating utility standard, the petitioner’s shelter costs totaled \$1,273.39. This did exceed half of the adjusted income (\$535.53), so a \$737.86 excess shelter cost should have been deducted in the allotment calculation. Because the petitioner is elderly, the \$469 shelter cap does not apply. *FSWH*, § 4.6.7.1.

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

| | |
|-----------------------------|----------------|
| Gross income | 1723.00 |
| Minus Earned Inc. Deduction | - 000.00 |
| Minus Excess Medical | -000.00 |
| Minus Dependent Care | -000.00 |
| Minus Child Support | -502.95 |
| Minus Standard Deduction | <u>-149.00</u> |
| Adjusted Income | 1071.05 |
| Minus Shelter Deduction | <u>-737.86</u> |
| Net Income | 333.19 |

The correct allotment for one person with net income of \$333.19 appears to be \$99 in May 2013. *FS Wisconsin Handbook*, 8.1.2, p.3.

CONCLUSIONS OF LAW

1. The Department incorrectly determined the petitioner’s FS allotment for May, 2013, due to errors related to child support payments and shelter costs. The Department should have deducted a \$502.95 child support expense and a \$737.86 shelter deduction.
2. The Department correctly declined to continue to subtract an Excess Medical Deduction for May 2013.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to redetermine the petitioner’s May 2013 FS allotment in accord with the Conclusions of Law above. This action shall be taken within 10 days of the date of this Decision. In all other respects, 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 15th day of May, 2013

\sNancy J. Gagnon
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 May 15, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability