



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148786

PRELIMINARY RECITALS

Pursuant to a petition filed April 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 May 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner's FS effective May 1, 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: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's household monthly income totals \$1750.90.
3. Effective May 1, 2013 petitioner's medical expenses totaled \$69.90.

4. Petitioner's has a monthly mortgage payment totaling \$811.77.
5. Petitioner claimed his property taxes as a business expense on his 2012 Schedule E for his rental property.
6. On April 17, 2013 the agency issued a notice of decision to petitioner stating that effective May 1, 2013 his monthly FS allotment would be \$53.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. § 273.9(b). From the gross household income, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6.1 are allowed: a standard deduction, an earned income deduction, a medical expenses deduction, a child support payment deduction, a dependent care expense deduction, and a shelter expense deduction. Some FS groups are not allowed a deduction for some expenses and some expenses are not always deducted in full. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

In this case, petitioner did not disagree with the calculation of the household income or the standard or medical deductions. Petitioner's testimony at hearing was that he was confused as to how his FS had decreased when his income and obligations had not changed substantially. The answer lies in the agency's admission that his FS had not previously been calculated correctly as it relates to his shelter and utility deduction. I provide the following policy language on that deduction:

The shelter deduction is determined by the food unit's reported and verified monthly expense obligation for the current residence for shelter.

Deduct shelter and utility obligation amounts (not actual amount paid) which exceed 50% of the food unit's net income after all other deductions are made. If shelter and utility obligation amounts (not actual amount paid) are less than 50% of the food unit's income, do not allow a deduction.

The shelter and utility deduction cannot exceed the shelter maximum unless the food unit includes an elderly, blind, or disabled individual. Food units that include elderly, blind, or disabled individuals have no shelter cap.

FS Handbook, §4.6.7.1. Exhibit 3 is the agency's FS budget calculations. It shows the petitioner received the standard deduction and the medical deduction, giving him the adjusted income of \$1532.

When determining the shelter expenses, the agency looks at the following 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.

Disregard HUD and FMHA payments paid directly to the landlord or mortgage holder as an expense. Only include the amount the household owes after the HUD or FMHA payments as a rent expense.

Do not allow in-kind payments as a shelter deduction. This includes arrangements such as receiving free rent for providing child care, or other services. In these situations, no rent deduction is allowed, no income is counted and no child care deduction is allowed.

Include costs for the repair of damages to the FS group's home due to a natural disaster as a shelter expense. Examples of natural disasters are fires, floods, hurricanes, and tornadoes.

Do not count expenses for repairs that have been or will be reimbursed to the food unit by any private or public relief agency, insurance company, or any other source.

If anyone in the household shares the shelter cost with the FS group, create a separate shelter screen for each contributor, using the correct obligation amount for which each contributor is responsible.

When a self employed person claims the total shelter costs as a business expense, do not allow any shelter deduction. If s/he claims a percentage of the shelter costs as a business expense, the remaining percentage is a shelter deduction.

FS Handbook, §4.6.7.2 (emphasis added).

It is this last emphasized portion of the policy here that matters. Petitioner claimed his property taxes as a business expense on his Schedule E for the rental property. As such, he cannot get that percentage of his shelter costs used as a shelter deduction. Based on the information before me, the agency calculated the benefits correctly.

I remind the petitioner that if his income decreases, or has other expenses/changes to his household, he must report and verify that to the agency so his FS can be redetermined. I add, assuming petitioner feels that this is not a fair determination, that I do not have equitable powers and cannot deviate from what law and policy dictate. See Oneida County v. Converse, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993). In other words, I cannot award someone more or continued FS because I think it is a good idea or that it would be fair to do so. I remind him to continue to pay attention to his notices and raise questions or appeals should it be warranted.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's FS effective May 1, 2013.

THEREFORE, it is

ORDERED

The petition for review herein 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 20th day of May, 2013

\sKelly Cochrane
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 20, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability