



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/150031

PRELIMINARY RECITALS

Pursuant to a petition filed June 14, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on July 22, 2013, at Racine, Wisconsin.

The issue for determination is whether Petitioner's FoodShare allotment has been correctly calculated.

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: Virginia Chabrier
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner filed this appeal indicating that his FS benefits have not been correctly calculated for the month of June, July, August and September 2013 because the agency is not including the correct shelter expense and because he does not believe he should be subject to a \$10 per month recoupment.
3. Petitioner's net FoodShare allotment for the months of June, July and August 2013 is \$14. The September 2013 allotment has not yet been issued.

4. There is a \$10.00 per month recoupment currently in place for Petitioner's FoodShare case which recovers FoodShare benefits which were continued for an earlier appeal which was not resolved in Petitioner's favor. Petitioner filed an appeal on September 13, 2012 to contest an October 1, 2012 reduction in the amount of his FoodShare benefits. Benefits were reduced from \$200 a month to \$66 a month effective October 1, 2012. The hearing was conducted on October 18, 2012 and a decision issued on November 9, 2012. The decision concluded that the agency correctly reduced Petitioner's FoodShare allotment. This resulted in a \$134 overpayment of FoodShare benefits in October and again for November 2012. The benefits noted at Finding # 3 are after the \$10.00 recoupment.
5. Petitioner's income is \$1047.85 per month. This consists of a Social Security benefit of \$1037.10 and earned income of \$10.75.
6. Petitioner is given the following deductions from income: a standard deduction of \$149.00, an earned income deduction of \$2.15, a shelter deduction of \$311.65 based on rent of \$318.00 and a standard utility allowance of \$442.00. Petitioner's rent of \$318 is the correct amount and, though Petitioner alleges it is not correctly accounted for, it is in the allotment calculation. See Exhibit # 3.
7. Petitioner's household size is one.

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 an elderly blind or disabled member. *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); FoodShare Wisconsin Handbook (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 - which currently is \$149 per month for a household of 1 person, *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).* There is a cap of \$459.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.1 and 8.1.3.*

A recoupment is a deduction from the benefit determined using the above formula. *FSH, §7.3.2.6.* Petitioner argues that he did not request continued benefits for the September 2012 appeal. That file is included in this record as Exhibit # 4. Petitioner is correct; he did not ask that benefits be continued. Nonetheless, as he filed the appeal prior to the October 1, 2012 reduction of his FoodShare, benefits were continued at the \$200 level. Because the hearing decision from that appeal was not in his favor the overpaid benefits must be recovered.

Using the Findings above and the FoodShare| allotment formula just described, I have reviewed the calculation of Petitioner's FoodShare for the months of June, July and August (September benefits have not yet been issued) and do not find any errors.

Petitioner also brought up a potential new issue involving excess medical expenses. As this was not noted on the current appeal the agency could not address that issue. The undersigned treated this issue as a new

appeal and the Division of Hearings and Appeals created a new case for Petitioner involving the medical expense issue. A hearing for that case is to be held soon.

CONCLUSIONS OF LAW

That the agency has correctly calculated Petitioner's FoodShare allotment.

THEREFORE, it is

ORDERED

That this appeal 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 8th day of August, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
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 August 8, 2013.

Racine County Department of Human Services
Division of Health Care Access and Accountability