



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/151417

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 16, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 24, 2013, at Madison, Wisconsin.

The issue for determination is whether the agency calculated petitioner's income and FS eligibility correctly.

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: Bridget Nelson

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. On July 19, 2013, the county agency sent a notice to the petitioner that stated that her FS would be reduced from \$360.00 to \$23.00 effective August 1, 2013. The basis for this action was that

the petitioner's total household income warranted a decrease in the amount of FS for which petitioner was eligible.

3. The petitioner is paid \$1,306.34 twice each month. Total monthly household income is \$2,612.68.

### **DISCUSSION**

In determining the amount of FS to be issued each month, the county must budget all of the income of the FS household, including all earned income. See 7 C.F.R. §273.9(b). From the gross household income, certain deductions as discussed in the *FoodShare Wisconsin Handbook*, §4.6 are allowed: (1) standard deduction - which currently is \$149 per month households of 1-3 people. 7 C.F.R. §273.9(d)(1); (2) earned income deduction - which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); (3) medical expense deduction - for medical expenses exceeding \$35 in a month for an elderly or disabled person. 7 C.F.R. §273.9(d)(3); (4) dependent care deduction for child care expenses. 7 C.F.R. §273.9(d)(4); and (5) shelter expenses deduction - 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). The maximum FS allotment amounts, based on household size, are listed at *FoodShare Wisconsin Handbook*, §8.1.7. The *FoodShare Wisconsin Handbook* can be viewed online at <http://www.emhandbooks.wi.gov/fsh/>.

I have reviewed the calculations, and have found no error. For August, 2013, the gross income (\$2,612.68) is reduced by the standard deduction (\$149) and the earned income deduction (\$522.53) to calculate the adjusted income (\$1,941.15). The shelter costs (\$795) is added to the utility standard (\$442) to determine the shelter/utility costs (\$1,237.00). Then, ½ of the adjusted income (\$970.57) is deducted from the shelter/utility costs (\$1,237.00) to determine the excess shelter/utility costs (\$266.43). That amount becomes an additional deduction from the adjusted income leaving the net income (\$1,674.72). That is the figure that is used when determining the eligibility for and the size of the FS allotment. For a three person household, the net income limit is \$1,591.00, which is found in the *FoodShare Wisconsin Handbook*, §8.1.1. To determine the amount of the appropriate FS allotment, the respondent must subtract from the maximum allotment for a household of three (\$526.00) 30% of the net adjusted income (502.50). This results in a FS allotment of \$23.00 for petitioner's household.

The petitioner argues that her net pay is much lower than her gross, in effect arguing that the FS program standard is unfair. While I can empathize with her situation, it is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, she is not eligible for more FS benefits than has been calculated; no exception applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

### **CONCLUSIONS OF LAW**

The respondent correctly reduced petitioner's monthly FS allotment to \$23.00 based upon petitioner's monthly household income.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 4th day of October, 2013

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\sPeter McCombs  
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 October 4, 2013.

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