



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/151819

PRELIMINARY RECITALS

Pursuant to a petition filed August 30, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regards to the sufficiency of FoodShare benefits (FS), a telephone hearing was held on September 25, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly reduced the petitioner’s FS from \$200 to \$16 due to an increase in household income.

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: Pang Thao, HSPC
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 was receiving \$200 of FS in September, 2013.
2. After application, the agency discovered that he was receiving \$310 gross private disability pay per week, or \$1,333 per month when multiplied by 4.3 weeks per month under prospective budgeting. See, Exhibit #1, attached Ceridian paystubs.

3. The agency added the \$1,333 of unearned income into the petitioner's budget, and this change resulted in the computations shown in the FS budget for October, 2013, as found in Exhibit #1, attached Food Stamp Allotment Determination screen dated 09/5/13. The agency allowed a standard deduction of \$149, a child support payment deduction of \$446.46 per month, and an *excess* shelter expense deduction of \$73.23, (based upon shelter and utility costs reported of only the standard utility allowance of \$442). The petitioner does not work, pay rent or mortgage, or have any minor children in his care. His net adjusted income after the three deductions was \$664.31 of countable income. The FS allotment, per the FS allotment table, for a 1 person household with net adjusted income of \$664.31, is \$16.
4. On August 26, 2013, the county agency issued a Notice to the petitioner informing him that his FS would be reduced, effective October 1, 2013, from \$200 to \$16, due to increased earnings.
5. The petitioner actually receives in hand between \$40 - \$65 per week from his disability benefits because his employer retains most of each check to cover health, dental, and vision insurance premiums for his benefit; state, social security, medicare; and federal taxes; and child support, life insurance premiums and a state levy fee.
6. On August 30, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the agency action to reduce his FS. Benefits were 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. The agency allowed this deduction. A second 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. The petitioner does not have any earned income. 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. The petitioner is 53 and is not eligible for Social Security Supplemental Security Income or even Social Security Disability Insurance Benefits. Rather, he receives a private disability payment each month. This private disability benefit status does not qualify him for excess medical expense deductions, and he has not produced any such evidence in any event at any time in the past. A fourth deduction is for child/dependent care. He has no children residing with him that need child care. 7 C.F.R. §273.9(d)(4); FoodShare Wisconsin Handbook, App. 4.6.6. A fifth 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)(6); FoodShare Wisconsin Handbook, App. 4.6.7. The agency correctly determined the petitioner's allowable excess shelter expense. The final deduction is for child support paid. 7 C.F.R. §273.9(d)(5); FoodShare Wisconsin Handbook, App. 4.6.5. The agency correctly determined the child support deduction. See also, Exhibit #2, paystubs.

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.

After correctly determining his gross income, the agency correctly tested all six possible deductions from gross income, reducing thereby the net adjusted income for this household to \$664.31 per month. Under the applicable FS allotment table, he is entitled to \$16 of FS. FoodShare Wisconsin Handbook, App. 8.1.2.

The fact that the petitioner has chosen to maintain a variety of insurance and retirement deductions is his choice. These funds are otherwise available for his maintenance and support and are not allowable deductions. Taxes, social security and medicare withholdings are also not deductions from income under

FS rules. See, 7 C.F.R. §273.9(d)(5); FoodShare Wisconsin Handbook, Apps. §§ 4.3, 4.6. The agency FS allotment determination must be sustained on these facts. The petitioner’s appeal is dismissed.

CONCLUSIONS OF LAW

That the county agency correctly determined the sufficiency of the petitioner’s October, 2013, FS allotment is \$16.

NOW, 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 4th day of October, 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 October 4, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability