



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/152300

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 24, 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 October 29, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined Petitioner’s FoodShare allotment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: Pang Thao Xiong, Income Maintenance Specialist II  
Milwaukee Enrollment Services  
1220 W. Vliet St.  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner filed an on-line ACCESS application for FoodShare benefits on August 13, 2013. At that time Petitioner indicated that she lived alone. (Exhibit 2, pgs. 18-33)

3. On September 9, 2013, the agency sent Petitioner a notice indicating that as of October 1, 2013, she would be receiving FoodShare benefits in the amount of \$16.00 per month. (Exhibit 2, pgs. 34-38)
4. Petitioner filed a request for Fair Hearing that was received by the Division of Hearings and Appeals on September 24, 2013. (Exhibit 1)
5. Petitioner does not live alone. Her adult grandson has been living with her for the last three years, because she needs assistance and they purchase, prepare and eat meals together. (Testimony of Petitioner)

### DISCUSSION

Petitioner filed an appeal to ask for more FoodShare benefits. Petitioner indicated that \$16.00 per month will not meet her needs, particularly because her grandson eats food with her. Ms. Thao Xiong testified that when the agency determined Petitioner's FoodShare benefits, it did not take Petitioner's grandson into account, because Petitioner did not report her grandson being in the home. (See Exhibit 2, pgs. 15-17)

The Federal FoodShare regulations define FoodShare household composition as follows:

*General household definition.* (a) A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

*7 C.F.R. §273.1(a) See in accord, FS Wisconsin Handbook, §§3.3.1.1; 3.3.1.2 and 3.3.1.3.*

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 a member over age 60. *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 then based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

Because Petitioner's son lives with her and they customarily purchase food and prepare meals together, he must be included in her home and his income taken into account. Consequently, the agency did not correctly determine Petitioner's FoodShare allotment. The agency will have to add Petitioner's grandson to her case, verify his income and re-determine Petitioner's FoodShare benefits. If Petitioner has any out of pocket medical expenses, she should report those to the agency as well.

### CONCLUSIONS OF LAW

The agency did not correctly determine Petitioner's FoodShare allotment.

**THEREFORE, it is**

**ORDERED**

That within ten days of this decision, the agency add Petitioner's grandson to her case and issue to Petitioner a request for verification of her grandson's income, giving Petitioner ten days to provide the

verification. Immediately upon receipt of the verification, the agency shall re-determine Petitioner's FoodShare benefits and issue to Petitioner a new notice of decision.

### **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 1st day of November, 2013.

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\sMayumi M. Ishii  
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 November 1, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability