FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOO/152925

PRELIMINARY RECITALS

Pursuant to a petition filed October 16, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on November 11, 2013.

The issue for determination is whether the Department correctly reduced the petitioner's FS allotment effective November 1, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Tom Miller
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of La Crosse County.
2. The petitioner has an ongoing FS case as a household of one person. Her October 2013 FS monthly allotment was $126.

3. On October 7, 2013, the Department issued written notice to the petitioner advising that her FS allotment would be reduced to $115, effective November 1, 2013. The petitioner timely appealed.

4. The Department's sole basis for benefit reduction was imposition of a reduced benefit level due to a mandatory change ordered by the Secretary of the federal Department of Agriculture. The petitioner's income and allowable FS income deductions for November are unchanged from those used in the October benefit calculation.

DISCUSSION

The federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5, section 101) included an appropriation for an across-the-board increase in FoodShare allotments of 13.6% as an economic stimulus measure. The appropriation increase was limited as to time and a rule formulation involving the "thrifty food plan." The federal FS statute, at 7 U.S.C. § 2027, states that the Secretary of the Department of Agriculture shall limit allotments so that they "are not in excess of the appropriation for ...[the fiscal year]." When the Secretary determines that the participants' allotments will exceed the appropriation, the Secretary must direct the states to reduce allotments to align with the appropriation. *See*, in accord, federal code at 7 C.F.R. § 273.10(e)(4). The Secretary has made that determination, and has announced that the 13.6% increase must expire effective October 31, 2013. That declaration is reflected in a U.S. Department of Agriculture memo, "SNAP – Fiscal Year 2014 Cost-of-Living Adjustments and ARRA Sunset Impact on Allotments," issued August 1, 2013, available online at **http://www.fns.usda.gov/snap/rules/Memo/2013/FY_2014_COLA_memo.pdf**. See, in accord, *BEPS/DFS Operations Memo*, #13-27, September 9, 2013.

The petitioner does not contest that the state agency has correctly calculated her gross income and permissible FS income deductions for November. However, the Secretary's action is controlling, and there is no legal authority for deviating from Secretary's decision setting the new allotment maximums.

CONCLUSIONS OF LAW

1. The state agency correctly reduced the maximum FS allotments per household size, per a directive from the Secretary of the federal Department of Agriculture, effective November 1, 2013.
2. The state agency correctly determined the petitioner's FS allotment for November 2013.

THEREFORE, it is **ORDERED**

That the petition 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, Room 651, 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 6th day of December, 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 December 6, 2013.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability