



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/154101

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 11, 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 January 14, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely filed and whether Milwaukee Enrollment Services (the agency) correctly calculated Petitioner's FoodShare allotment November 1, 2013.

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, Room 651  
Madison, Wisconsin 53703

By: Katherine May, HSPC Senior  
Milwaukee Enrollment Services  
1220 W. Vliet St., Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On March 15, 2013, the agency sent Petitioner a notice indicating that her FoodShare benefits would be decreased from \$52.00 per month to \$16.00 per month effective April 1, 2013, because of an increase in her household income. (Exhibit 3, pgs. 18-24)
3. On October 9, 2013, the agency sent Petitioner a notice indicated that her FoodShare benefits increased from \$16.00 per month to \$45.00 per month, effective November 1, 2013. (Exhibit 3, pg. 30)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 11, 2013. (Exhibit 1)
5. As of November 1, 2013, Petitioner income's consisted solely of Social Security Income in the amount of \$1022 per month. (Exhibit 3, pgs. 32 and 38)
6. As of November 1, 2013, Petitioner paid rent in the amount of \$375.00 per month. (Exhibit 3, pgs. 32 and 38)
7. Petitioner lives alone and his considered elderly (over age 60) for FoodShare purposes. (Exhibit 3, pg. 5)

### DISCUSSION

In her appeal, Petitioner indicated that she wanted to appeal the calculation of her FoodShare allotment from November 2012 to the present, because she feels the agency incorrectly included income from dividends when determining her gross and net income. However, the agency did not count any divided income until it determined Petitioner's FoodShare allotment for April 2013. (*See Exhibit 3, pgs. 18-24 and pgs. 36 and 37*).

An appeal of a negative action, such as the alleged miscalculation of FoodShare benefits, must be filed within 90 days of the date of that action. 7 C.F.R., § 273.15(g). Otherwise, jurisdiction is lost and the administrative law judge cannot hear the case on its merits.

With regard to the dividend income issue, the date of action was April 1, 2013, the date Petitioner's FoodShare benefits were decreased due to the inclusion of her dividend income. As such the appeal deadline for this action was July 1, 2013. Petitioner filed her appeal concerning the inclusion of dividend income on December 11, 2013. This was well past the 90-day filing deadline, which fell on July 1, 2013. Consequently, Petitioner's appeal was untimely and there is no jurisdiction for the administrative law judge to review the agency's calculation of Petitioner's FoodShare benefits from April 1, 2013 forward.

The only other action taken by the agency was its increase of Petitioner's benefits from \$16.00 per month to \$45.00 per month, effective November 1, 2013. Petitioner was notified of this change on October 9, 2013. Petitioner's appeal is timely with regard to this action.

Looking at the FoodShare budget print out it is apparent, that the agency did not count any income other than Petitioner's Social Security income when calculating Petitioner's FoodShare allotment. (*See Exhibit 3, pgs. 32 and 38*)

The following deductions are applied in determining the FoodShare allotment. (*FSH, at § 4.6*):

- (1) a standard deduction –

This is \$152 per month for a household of 1-3 people. 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).

The heating standard utility allowance (HSUA) is \$450 per month.

There is also a cap of \$478.00 on the shelter cost deduction, *unless* a household has an elderly, blind or disabled member.

*FSH, §§ 4.6.7.1 and 8.1.3.*

The term ‘disabled’ is a term with a definition as to the FoodShare program:

**3.8.1.1 EBD Introduction**

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: [SSA](#), [MA](#), [SSI](#) or SSI related MA, Railroad Retirement Board ([RRB](#)).

*FSH, §3.8.1.1.*

Applying the applicable deductions to Petitioner’s income we have the following net income calculation, effective November 1, 2013:

Gross Income	\$1022.00	Rent	\$375.00
No Earned Income Deduction		HSU	+\$450.00
Standard Deduction	-\$152.00	50% Net income	-\$435.00
No Medical Expenses exceeding \$35			
No Dependent Care Expenses		Excess Shelter Expense	\$390
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Net Income	\$870.00		
Excess Shelter Expense	-\$390.00		
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Net Income	\$480.00		

Effective November 1, 2013, individuals, in a household of one, with a net income of \$480.00 qualify for a FoodShare allotment of \$45.00 per month.

**CONCLUSIONS OF LAW**

- 1) Petitioner’s appeal of the decrease of her FoodShare benefits effective April 1, 2013, due to the inclusion of dividend income, is untimely.
- 2) The agency correctly calculated Petitioner’s FoodShare benefits as of November 1, 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 Milwaukee,  
Wisconsin, this 29th day of January, 2014.

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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 January 29, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability