



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/154886

PRELIMINARY RECITALS

Pursuant to a petition filed January 15, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 20, 2014, at Sheboygan, Wisconsin.

The issue for determination is whether the Sheboygan County Department of Human Services (the agency) correctly determined Petitioner's FoodShare allotment, effective March 1, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kristin Schmidt, Economic Support Supervisor
Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Sheboygan County.
2. On January 20, 2014, the agency sent Petitioner a notice indicating that effective March 1, 2014, her FoodShare benefits would be ending because she was over the income limit. (Exhibit 3)

3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 21, 2014. (Exhibit 1)
4. On January 24, 2014, the agency sent Petitioner a notice indicating that she would be eligible for FoodShare benefits in the amount of \$15 per month. (Exhibit 9)
5. Petitioner’s assistance group size is one; she is neither over age 60, blind nor disabled. (Testimony of Petitioner)
6. Petitioner pays \$400 a month in rent and is responsible for paying utilities. (Testimony of Petitioner)

DISCUSSION

In order to receive FoodShare benefits a household must have **gross** income at or below 200% of the Federal Poverty Limit (FPL), though the gross income test does not apply where a household has a member over age 60. (Emphasis added) *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FoodShare household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

According to the January 24, 2013 notice, the agency calculated Petitioner’s gross income to be \$682.79 every other week. Petitioner disputes the agency’s calculation of her income.

Petitioner provided the following paychecks that reflect the following gross income:

11/02/13 -	\$591.03
11/16/13 -	\$347.22
11/30/13 -	\$1,024.61
12/14/13 -	\$768.11
12/28/13 -	\$481.95
01/11/14 -	\$533.52

Total:	\$3746.44

See Exhibit 2

If income fluctuates, it is to be averaged over the certification period. *FSH §1.2.4.2* Such income is to be verified and in the absence of such verification, the agency is to use the best information available, i.e. check stubs over 30 days old, or customer statement. *Id.* Petitioner’s income does, indeed, fluctuate. So it is appropriate to average her income over a larger period of time.

In the case at hand, the best information is Petitioner’s paystubs. Totaling the paystubs provided by petitioner we have the following calculations:

\$3746.44 / 6 bi-weekly paychecks = \$624.41 average income every other week
 \$624.41 x 2.15 average bi-weekly pay periods per month = \$1342.48 average monthly gross income

The 200% Gross Income limit for a household of one is \$1916.00 *FSH §8.1.1.1*; so Petitioner meets gross income limits.

Once a household passes the gross income test 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);

In Petitioner’s case, this works out to be $\$1342.48 \times .20 = \268.50

(3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 CFR § 273.9(d)(3);

This does not apply to Petitioner since she is not considered elderly, blind or disabled.

(4) dependent care deduction for child care expenses, 7 CFR § 273.9(d)(4); and

This does not apply to Petitioner.

(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).

During the time in question, the heating standard utility allowance (HSUA) was \$450 per month.

There is 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:

Gross Income	\$1342.48	Rent	\$400.00
Earned Income Deduction	-\$268.50	HSU	\$450.00
Standard Deduction	-\$152.00	50% Net income	-\$460.99
No Medical Expenses exceeding \$35			
No Dependent Care Expenses			
		<hr/>	<hr/>
Net Income Before Shelter Ded.	\$921.28	Excess Shelter Expense	\$389.01
Excess Shelter Expense	- \$389.01		
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Net Income	\$532.27		

Individuals, in a household of one, with a net income of \$532.27 qualify for a FoodShare allotment of \$29.00 per month. *FSH §8.1.2.*

CONCLUSIONS OF LAW

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

THEREFORE, it is

ORDERED

That the agency issue to Petitioner, FoodShare benefits in the amount of \$29.00 per month effective March 1, 2014. The agency shall take all administrative steps necessary to complete this task within 5 (five) days of this 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, 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 11th day of March, 2014.

\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 March 11, 2014.

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