



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

FOO/155643

PRELIMINARY RECITALS

Pursuant to a petition filed February 23, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Barron County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 18, 2014, at Barron, Wisconsin.

The issue for determination is whether the county agency correctly determined the petitioner's FoodShare allotment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: Candi Gillette

Barron County Department of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Barron County.

2. The petitioner's monthly medical expenses were \$61 for his Medica health insurance policy premium, \$104.90 for his Medicare Part B premium, \$6.50 per month for an AFLAC policy, and \$67.50 for other unreimbursed medical expenses.
3. The petitioner paid \$2,505.48 a year in property taxes and \$926.04 in homeowner's insurance.
4. After adding depreciation back into income, the petitioner earns \$249.75 per month from rental property.
5. The petitioner receives \$674.48 per month from social security and interest income.
6. The county agency determined that as of March 1, 2014, the petitioner was entitled to \$140 in FoodShare benefits each month.

DISCUSSION

FoodShare benefits depend upon a household's size and net income. Net income is determined after subtracting from gross income those deductions—and only those deductions—found in 7 CFR § 273.9(d). When determining self-employment income for FoodShare benefits, agencies must add depreciation back in. *See* 7 CFR § 273.11(b)(2)(iii). To ensure that eligibility decisions are based on accurate information, recipients must verify certain information. 7 CFR § 273.2(f)(1).

The petitioner contends that the agency incorrectly determined his FoodShare benefits because it understated his medical expenses and overstated his earned income. The FoodShare program allows an excess medical expense deduction for unreimbursed monthly medical expenses that exceed \$35. 7 CFR § 273.9(d)(3); *FoodShare Wisconsin Handbook*, § 4.6.4.1. The county agency allowed \$165.90 for medical expenses, including \$61 for a Medica health insurance policy premium and \$104.90 for Medicare Part B premiums. The petitioner contends that he should also be allowed \$6.50 for an AFLAC policy and \$67.50 for other unreimbursed costs. (In his submission, he lists the Part B premium as a deduction from his gross income, but it is a properly a medical expense.) The agency contends that he did not adequately verify his additional expenses.

Agencies must deny benefits to those who refuse to cooperate with completing the application process; this process includes verification. However, “[f]or a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency shall provide assistance required by paragraph (c)(5) of this section.” 7 CFR § 273.2(d)(1) (d). Wisconsin policy reflects this federal mandate: “The local agency must assist the applicant in obtaining this verification providing the applicant has not refused to cooperate with the application process.” *FoodShare Wisconsin Handbook*, § 1.2.1.3. Wisconsin policy also requires agencies to be flexible in what items can be submitted as verification: “Do not exclusively require one particular type of verification when various types are adequate and available.” *FoodShare Wisconsin Handbook*, § 1.2.1.1.

The petitioner submitted a large amount of documentation for his hearing to support his medical expenses. These included his check register and statements from the various providers. I was unable to follow exactly what he provided to the agency before the hearing. He was represented at the hearing by his accountant, who was clearly frustrated by the process, but I have no evidence that either the petitioner or his representative failed to cooperate with the agency. Based upon this, I will accept the evidence before me to find that the medical expenses are properly verified and that the petitioner is entitled to \$233.40 in medical expenses he seeks. After subtracting the first \$35 of these expenses, he is entitled to \$198.40 for his medical deduction. I do note that given that the petitioner has two insurance policies in

addition to his Medicare Part B coverage, his unreimbursed medical expenses seem high. Nevertheless, I will allow them because the preponderance of the credible evidence supports them. If the petitioner has future hearings, the evidence introduced at those hearings will determine what deductions he receives.

As for his rental income, the petitioner contends that the agency failed to deduct real estate taxes, depreciation, accounting costs, and repairs. He contends that if the agency had done this, his net rental income would be \$27.44 per month rather than the \$249.75 the agency attributes to him. The agency relied upon the petitioner's 2012 federal income tax return and came to its finding after adding depreciation back into the income as the law requires. The petitioner's accountant asserts various expenses without providing documentation. The income tax return already determined his income after various deductions, and I can find no error in the agency's calculations. If the petitioner's self-employment income has fallen, he can submit his 2013 return to the county agency to show a change of circumstances affecting his future benefits.

The petitioner's current gross income is \$924.23. As previously discussed, he is entitled to a \$198.40 deduction for his unreimbursed medical expenses. Next, he is entitled to the \$152 standard deduction allowed for households with up to three members. *FoodShare Wisconsin Handbook*, § 4.6.2 and 8.1.3; 7 CFR § 273.9(d)(1). He is also entitled to an earned income deduction equal to 20% of his \$249.75 earned income, or \$49.95. *See* 7 CFR § 273.9(d)(2).

Finally, he is entitled to the shelter deduction, which equals the amount that housing costs, including a standard utility allowance currently set at \$450, exceed 50% of the net income remaining after all other deductions are subtracted from gross income. *FoodShare Wisconsin Handbook*, § 4.6.7; 7 C.F.R. § 273.9(d)(6)(ii); *FoodShare Wisconsin Handbook*, § 8.1.3. The maximum allowed for this deduction is \$478. *FoodShare Wisconsin Handbook*, § 8.1.3. The petitioner pays real estate taxes and insurance on his house but has no mortgage. The agency's figures for these expenses were slightly different than the petitioner's, but I will accept his because I assume his accountant has provided current information. Those figures are \$2,505.48 a year in property taxes and \$926.04 in homeowner's insurance for a total of \$3,431.52. Dividing this by 12 gives \$285.96 per month. Adding the \$450 standard utility deduction brings the total to \$735.96. Because there is a standard utility allowance, his actual utility costs are not considered. Deducting the \$152 standard allowance, his \$198.40 medical deduction, and the \$49.95 earned income deduction from his \$924.23 gross income, leaves him with \$523.88. Half of this is \$261.99. His \$735.96 in shelter costs exceed this amount by \$473.97, which is his shelter deduction. Subtracting all the deductions he is allowed, the \$473.97 shelter deduction, the \$152 standard deduction, the \$233.40 medical deduction, and the \$49.95 earned income deduction from his \$924.23 gross income, leaves him with \$49.91 in countable net income. The FoodShare allotment for a one-person household, the size of the petitioner's, with this income is \$174. *FoodShare Wisconsin Handbook*, § 8.1.2.

CONCLUSIONS OF LAW

The petitioner is entitled to \$174 per month in FoodShare benefits.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it increase the petitioner's FoodShare allotment to \$174 per month retroactive to March 1, 2014.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 1st day of April, 2014

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 1, 2014.

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