



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/156001

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 11, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on April 17, 2014, at Janesville, Wisconsin.

The issue for determination is whether the agency correctly reduced the petitioner’s FS effective February 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: Pam Edmonds, ES Supr.  
Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Rock County.
2. The petitioner has an ongoing FS case as a household of one person. Prior to February 2014, his FS monthly allotment was \$111. Based on submitted paystubs from late November and early

December 2013, the agency recalculated the amount of his allotment for February 2014 forward. On December 23, 2013, the Department issued written notice to the petitioner advising that his FS allotment would decrease to \$15 effective February 1, 2014. *See*, Exhibit 1, Notice. The petitioner appealed on March 11, 2014.

3. The petitioner receives Social Security Retirement of \$954 monthly. The paystubs submitted on December 18, 2014, show gross earned income of at least \$429.89 monthly. Total gross monthly income was therefore \$1,383.89. Upon receipt of updated income verification in late February 2014, the agency began budgeting gross earned income of \$350 monthly, plus the Social Security, for the April 2014 allotment.
4. The petitioner has not identified any payment of excess (unreimbursed) medical expenses, daycare expense, or child support from his income. He pays rent of \$495.00, and a utility standard deduction was given in the allotment calculation. *See*, Exhibit 7, calculation.

### DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for February and March 2014, onward. The gross income was based on the paystubs from late November and early December 2013, submitted by the petitioner. There is no dispute as to the amounts that were shown on the paystubs, or the agency's arithmetic in averaging those paystubs. The budgeting calculations here were performed prospectively. Prospective budgeting should reflect what the petitioner is likely to receive, on average, each month. *FS Wisconsin Handbook (FSWH)*, 4.1.1, viewable online at [www.emhandbooks.wisconsin.gov/fsh/](http://www.emhandbooks.wisconsin.gov/fsh/). For earned income that is received biweekly, the agency is directed to develop a biweekly average, and then multiply that figure by 2.15 to account for three-paycheck months. For weekly income, the multiplier is 4.3. 7 C.F.R. §273.10(c)(2).

Clearly, the petitioner dislikes the prospective budgeting system. However, that is what is called for in federal regulation. The petitioner would have preferred that the agency consider his lower income received in January for his February benefit, but he did not report the lower income until late February, 2014. That was too late to affect his February and March benefits. Adopting the petitioner's argument that the year-to-date total should be used in allotment calculations does not alter the result. Per the petitioner's testimony and the Evansville earnings statement submitted on or shortly after February 18, 2014, the petitioner earned \$50.00 in January and \$750.00 in February (the statement shows February income of \$300.00 through 2-18/14). Adding \$50 to \$750 results in \$800 gross earnings over eight weeks. The bi-weekly average is \$200.00, which is multiplied by 2.15 per the above regulations, to arrive at monthly gross average earnings of \$430.00. This is a few cents more than the \$429.89 actually budgeted by the agency for the February and March allotments.

In calculating the petitioner's February allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county start with gross, rather than net, income, and allow only a limited number of identified deductions from that income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a case with one to three persons is currently set at \$152, per *FS Wisconsin Handbook*, 8.1.3. Twenty percent of any earned income is then subtracted as the Earned Income Deduction; that deduction was correctly given here. A Dependent Care Deduction is also taken if the petitioner incurred day care expenses in order to go to work, an Excess Medical Expense Deduction is subtracted for an elderly or disabled person's allowable medical expenses that exceed \$35 per month, and child support paid out garners a deduction. There is no record of the latter three expenses here. 7 C.F.R. § 273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of that income. 7 C.F.R. §273.9(d)(6)(ii). Based on a \$495.00 shelter cost plus the \$450 heating utility standard, the petitioner's shelter costs totaled \$945.00. This did exceed half of the adjusted income (\$572.96), so

the excess shelter cost over the \$572.96 was deducted in the allotment calculation (\$945.00 - \$572.96 = 372.04).

Thus, the February 2014 allotment calculation correctly looked like this:

Gross income	1383.89
Minus Earned Inc. Deduction	- 85.97
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-152.00</u>
Adjusted Income	1145.92
Minus Shelter Deduction	<u>-372.00</u> (\$478 is the maximum)
Net Income	773.88

The correct allotment for one person with net income of \$773.88 was \$15 in April 2014. *FS Wisconsin Handbook*, 8.1.2, p.7.

**CONCLUSIONS OF LAW**

1. The Department correctly determined the petitioner’s FS allotments for February and March 2014.

**THEREFORE, it is** **ORDERED**

That the petition is *dismissed*.

**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 2nd day of May, 2014

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\sNancy J. Gagnon  
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 May 2, 2014.

Rock County Department of Social Services  
Division of Health Care Access and Accountability