



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/156782

PRELIMINARY RECITALS

Pursuant to a petition filed April 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 May 19, 2014, at Janesville, Wisconsin.

The issue for determination is whether the agency erred in its determination of the FS allotment for petitioner.

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: Tami Bliss

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner has been an ongoing FS recipient as a one-person household. His SS unearned income is \$1,328.90 per month which places him at 138.78% of the federal poverty level.

3. Petitioner established an excess medical expense deduction of \$79.55 per month.
4. On March 26, 2014, the agency sent notice to petitioner following a review. The notice informed petitioner that he would continue getting FS at the \$15 allotment as he had for several months.
5. Petitioner filed a request for hearing from the March notice.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which was, at the relevant time of the agency action, \$142 per month for a three person household. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FoodShare Wisconsin Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FoodShare Wisconsin Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FoodShare Wisconsin Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FoodShare Wisconsin Handbook, App. 4.6.7.

Petitioner did not dispute the income set forth in finding of fact number 2. The gross income limit for a household of one is \$1,916. See *FS Handbook* §§ 4.2.1, 8.1.1. The net income limit for a household of one is \$958. *FS Handbook*, App. 8.1.1.

Petitioner's household income is below the gross income limit. This is clear from the testimony & exhibits. The representative from the Department stated so during the hearing. Thus, he is categorically eligible for FS. After the standard deduction (\$152) and excess shelter deduction (\$441.06) petitioner's net income was \$656.82. See budget screen in exhibit #1. According to FS Handbook 8.1.2, the FS allotment for a one-person household with a net income between \$576.70 and \$1,580.03 is \$15.

The agency explained that petitioner has a deduction from his SS income to cover a past overpayment. The agency explained that it must budget the gross SS income and not the amount petitioner is actually receiving. That is not correct. The agency is to budget the gross SS but subtract from the gross SS any amounts deducted for prior overpayments:

FSH 4.3.4.2 Counted Unearned Income

* * *

5. **Gross Social Security payments less any repayments withheld due to previous overpayments of Social Security benefits.** Include any Child Support payments withheld from Social Security payments. This will ensure that Child Support payments are correctly included in the total gross unearned income and correctly budgeted as a Child Support payment deduction.

* * *

The agency must redetermine the FS allotment.

CONCLUSIONS OF LAW

The allotment must be determined based on the gross SS minus the deduction for a repayment of a previous overpayment.

THEREFORE, it is

ORDERED

The matter is remanded to the agency to redetermine petitioner's FS allotment retroactive to April 1, 2014 with attention to rule 4.3.4.2(5) of the FS Handbook and ducting from the SS income any sums going toward repayment of previous overpayment of SS. The agency must issue appropriate supplements. These actions shall be completed within 10 days.

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 27th day of May, 2014

\sJohn P. Tedesco
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 27, 2014.

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