



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/157710

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services - WI Rapids in regard to FoodShare benefits (FS), a hearing was held on June 12, 2014, at Medford, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner is ineligible for FoodShare because her household income exceeds the program's limit.

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: Beulah Garcia

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Taylor County.
2. There are five persons in the petitioner's household.
3. The petitioner receives a total of \$972.84 in disability and child support payments.

4. [REDACTED], the father of the petitioner's oldest child, earns \$2,807.10 a month. He pays an average of \$491.18 per month in child support.
5. The petitioner pays \$600 plus utilities for her shelter.
6. The county agency determined that the petitioner's household is ineligible for FoodShare because its income exceeds the program's net income limit.

DISCUSSION

The size of a FoodShare allotment depends upon net income and household size. Net income is determined after subtracting those deductions—and only those deductions—found in 7 CFR § 273.9(d) from gross income. The petitioner's household includes [REDACTED], the father of her oldest child, and her three children. The agency determined that the petitioner was ineligible for benefits because her net income exceeds the program's limit. She challenges the agency's determination of the amount of child support paid by [REDACTED] and the amount she pays for shelter. ,.

[REDACTED] earns an average of \$2,807.10 per month.. The petitioner receives a total of \$972.84 in disability and child support payments. Her household is entitled to the \$191 standard deduction allowed for households with five person. *FoodShare Wisconsin Handbook*, § 4.6.2 and 8.1.3; 7 CFR § 273.9(d)(1). They are also entitled to an earned income deduction equal to 20% of [REDACTED]'s \$2,807.10 earned income, or \$561.42. *See* 7 CFR § 273.9(d)(2). And they are entitled to a deduction for [REDACTED]'s child support payment. She contends that the agency failed to account for the arrearage he pays in addition to the regular payment. She testified that his regular payment is \$455.01 per month, but his total payment is \$520. The agency did consider his arrearage because it gave him credit for \$491.18 per month. Neither side provided any documentation of how it arrived at its figure. The agency generally bases this deduction on payments made in the last three months. In the future, it should provide better documentation. However, the petitioner has the burden of proving by the preponderance of the credible evidence the facts necessary to support the outcome. Because she did not present any evidence showing that the agency was wrong, I will accept its figure.

The last deduction the petitioner might be entitled to is the shelter deduction. This deduction equals the amount that housing costs, including a standard utility allowance currently set at \$471, exceed 50% of the net income remaining after all other deductions are subtracted from gross income. *FoodShare Wisconsin Handbook*. §§ 4.6.7 and 8.1.3; 7 C.F.R. § 273.9(d)(6)(ii). The petitioner reported to the county agency that she pays \$600 per month for her housing but now contends that this is \$1,000. The difference is that she reported only her share to the agency rather than the total amount she and [REDACTED] paid together. I find that the agency properly relied upon what the petitioner reported to it. If this figure is not correct, she can report a change of circumstances to the agency if she reapplies. I am aware that this decision comes to a different conclusion about the petitioner's shelter deduction than was reached in her overpayment case. *DHA Decision No. FOP-157709*. That matter determined that the petitioner was entitled to the total amount she and [REDACTED] paid. The difference is that in that matter the Department had the burden of proof while here she does. Thus, it was up to the Department to prove that the figure used for the overpayment was correct. As noted earlier, in the matter now before me, the petitioner has the burden of proving that the agency was wrong. It is difficult to argue that the agency was wrong when it relied upon an amount provided and verified by the petitioner. Adding the \$600 to the \$471 standard deduction gives \$1,071 in shelter costs.. Because there is a standard utility allowance, her actual utility costs are not considered. Deducting the \$191 standard allowance, the \$561.42 earned income deduction, and the \$491.18 child support deduction from her \$3,779.94 total gross household income leaves \$2,536.34. Half of his is \$1,268.17. Because this is greater than her allowable shelter costs, she is not entitled to a shelter deduction.

The petitioner's net income remains \$1,268.17. Five-person households with this net income are not entitled to any FoodShare. *FoodShare Wisconsin Handbook*, § 8.12. Therefore, I must find that the county agency correctly determined the petitioner's FoodShare allotment.

CONCLUSIONS OF LAW

The county agency correctly determined the petitioner's FoodShare allotment.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 3rd day of July, 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 July 3, 2014.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability