



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/158595

PRELIMINARY RECITALS

Pursuant to a petition filed June 23, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 13, 2014, by telephone. A hearing set for July 16, 2014, was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly reduced the petitioner's FS allotment effective July 1, 2014.

There appeared at that time 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: Jose Silvestre, IM-Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]), age 40, is a resident of Milwaukee County.

2. The petitioner has an ongoing FS case as a household of one person. Her case was reviewed in May 2014. The Department confirmed that the petitioner receives unearned income of \$830 monthly, and that she does not incur a recognized utility expense.
3. On May 22, 2014, the Department issued written notice to the petitioner advising that her FS would be reduced from \$138 to \$15 effective July, 2014. The basis for reduction was decreased utility expenses. Exhibit 4. The petitioner timely appealed, and aid was ordered continued pending appeal.
4. The petitioner has a shelter expense of \$400, but no utilities. She does not pay out child support, and does not incur a dependent care expense to go to work.

DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for July 2014, onward. The gross income was an undisputed \$850 monthly in unearned income. 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/.

In calculating the petitioner’s July 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 not 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 \$400 shelter cost plus *no* utility standard, the petitioner’s shelter costs totaled \$400. This did exceed half of the adjusted income (\$339), so the excess shelter cost of \$61 was deducted in the allotment calculation.

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

Gross income	830.00
Minus Earned Inc. Deduction	- 000.00
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-152.00</u>
Adjusted Income	678.00
Minus Shelter Deduction	<u>- 61.00</u>
Net Income	617.00

The correct allotment for one person with net income of \$617 was \$15 in July 2014. *FS Wisconsin Handbook*, 8.1.2, p.6. The change in the petitioner’s benefit level was the discontinuance of the practice of subtracting a utility expense, even if the petitioner had no heating cost. That practice is no longer allowed, due to provisions of the recently passed federal farm bill. See, *DHS Ops Memo* 14-16.

CONCLUSIONS OF LAW

1. The Department correctly determined the petitioner's FS allotment for July 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 17th day of September, 2014

\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 September 17, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability