FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOO/159376

PRELIMINARY RECITALS

Pursuant to a petition filed July 26, 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 August 18, 2014, at Washburn, Wisconsin.

The issue for determination is whether the county agency correctly reduced the petitioner's FoodShare allotment because she no longer qualifies for the heat standard utility allowance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[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 Bayfield County.
2. The petitioner lives alone.
3. The petitioner's income consists of $872.78 in social security each month.

4. The petitioner lives in government-subsidized housing. She pays $231 per month, which includes all of her utilities except for her telephone.

5. The county agency reduced the petitioner's FoodShare allotment from $90 to $15 per month because her shelter costs fell after the federal government no longer allowed a "heat standard" utility allowance for those who did not pay their own energy costs.

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). The petitioner lives alone and receives $872.78 per month in social security, which is considered unearned income. Her allowable deductions include the $152 standard deduction allowed for all household with up to three persons and, potentially, a shelter deduction based on a rather complex formula that considers various expenses associated with maintaining a dwelling. (The authority for the standard deduction is found at *FoodShare Wisconsin Handbook*, §§ 4.6.2 and 8.1.3 and 7 CFR § 273.9(d)(1).)

Expenses considered when determining the shelter deduction include rent and utilities. Until recently, the shelter deduction for almost everyone in Wisconsin included a "heat standard utility allowance," currently set at $450, even if their utilities were included in their rent. This allowance was available to anyone who received energy assistance. Wisconsin and other states took advantage of this provision by granting those whose utilities were included in their rent a nominal $1 energy assistance payment. The Agriculture Act of 2014 ended this practice. Title IV, § 4006 of that act now allows a standard utility allowance only if the recipient received an energy assistance payment of at least $20 in the last 12 months.

The effect of this change is seen when the petitioner's shelter deduction is calculated. The shelter deduction equals the amount that housing costs 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. When the petitioner's only other deduction, the $152 standard deduction, is subtracted from her $872.78 monthly income, her remaining income is $672.78. Half of this is $336.39. Her shelter costs had consisted of her $231 rent plus her $450 heat standard utility allowance, giving her total costs of $681. This exceeded 50% of her $336.39 adjusted income by $344.61, which became her shelter deduction. Under the provision in the latest farm bill, her shelter costs are her $231 rent and a $30 phone utility allowance. *FoodShare Wisconsin Handbook,* § 8.1.3. This adds up to $261. Because this is less than her $336.39 adjusted income, she does not receive a shelter deduction. As a result, her only allowable deduction is the $152 standard deduction, and her net income is $672.78. With the more liberal heating allowance, her net income would have been $328.17. The FoodShare allotment is $90 for a single person with net income of $328.17 but only $15 if her net income is $672.78. *FoodShare Wisconsin Handbook,* § 8.1.2. Based upon this, I must uphold the agency's decision.

In making this decision, I am aware that the petitioner contends that this $75 reduction will create a hardship for her, and I do not doubt that it will. Nevertheless, I have no authority to ignore the various statutes and regulations affecting the FoodShare program.

CONCLUSIONS OF LAW

1. The petitioner is not entitled to the Heat Standard Utility Allowance because her heating costs are included in her rent and she has not received an energy assistance subsidy of at least $20 in the last year.
2. 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 19th day of August, 2014

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\sMichael D. O'Brien
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 August 19, 2014.

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