



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159480

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 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 26, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined the Petitioner's FoodShare allotment.

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: Simone Johnson, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 19, 2014, the Petitioner completed a renewal by phone. (Exhibit 2, pg. 8)

3. On May 20, 2014, the agency sent the Petitioner a notice indicating that effective July 1, 2014, his FoodShare benefits would be reduced from \$90.00 to \$15.00. (Exhibit 2, pg. 15)
4. On July 14, 2014, the Petitioner contacted the agency to report that he has a telephone expense, but the agency determined that his FoodShare allotment would still be \$15.00. (Exhibit 2, pg. 8)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 29, 2014. (Exhibit 1)
6. Petitioner has a household of one person. (Exhibit 2, pg. 4)
7. Petitioner pays \$235.00 per month in rent, which includes heat and electricity. (Testimony of Petitioner; Exhibit 2, pg. 18)
8. Petitioner's apartment complex is owned by the [REDACTED] and is low income housing.

See http://www.hacm.org/applying/pdf/High-rise_Information_for_App_Flyer_6_2013.pdf
9. Petitioner is responsible for a phone utility. (Exhibit 2, pg. 8 and 14)
10. Petitioner receives \$717.00 per month in Social Security Retirement Income, \$24.00 in Federal Supplemental Security Income and \$83.78 in State Supplemental Security Income, for total income of \$824.78. (Exhibit 2, pgs. 9-12)

DISCUSSION

Petitioner filed an appeal to contest the reduction of his FoodShare benefits.

Once a household passes the gross income test the following deductions are applied in determining the FoodShare allotment. (FSH, at § 4.6):

- (1) a standard deduction –

This is \$152 per month, 7 CFR § 273.9(d)(1):

- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 CFR § 273.9(d)(2);

Petitioner does not have any earned income, so this would not apply to her.

- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 CFR § 273.9(d)(3);

Petitioner did not report any out of pocket medical expenses.

- (4) dependent care deduction for child care expenses, 7 CFR § 273.9(d)(4); and

Petitioner did not report any child care expenses.

- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 CFR § 273.9(d)(5).

There is a cap on this deduction of \$478 per month, unless the recipient is elderly, blind or disabled, meaning a food unit member age 60 or older or a person who receives disability or blindness benefits from any of these programs: SSA, MA, SSI or SSI related MA, Railroad Retirement Board (RRB). FSH, §3.8.1.1.

FSH, §§ 4.6.7.1 and 8.1.3.

Previously, Federal Regulations allowed households who received at least \$1.00 in energy assistance to receive an income deduction for the Heating Standard Utility Allowance (HSUA). (Ops Memo 14-16; Exhibit 2, pgs. 23-31) In 2009, the State of Wisconsin issued an annual energy assistance payment of \$1.00 to FoodShare households who did not already receive energy assistance. (Id.) This allowed all households to receive an income deduction for the HSUA, which is currently, \$450. (Id.)

The 2014 Farm Bill changed the Federal Regulations to require households to receive greater than \$20 in energy assistance, in order to receive the \$450 HSUA. (Ops Memo 14-16; Exhibit 2, pgs. 23-31) Consequently, Effective April 1, 2014, the State of Wisconsin ceased providing the \$1.00 energy assistance to households not who were not receiving energy assistance. (Id.) Consequently, many of those households lost the HSUA deduction.

The Petitioner argues that he should receive the HSUA because a portion of his rent is used to cover heating and utility expenses. However, in order to receive the HSUA, a person must have a separate, out-of-pocket heating bill. –The only exception is if a person lives in subsidized housing and heat is included in the housing costs. *FoodShare Wisconsin Handbook §4.6.7.3* In that circumstance, the heat is considered as being paid by energy assistance and the household is entitled to the full HSUA. *Id.*

It appears that the Petitioner lives in subsidized housing and therefore, falls into the above stated exception. *See:*

http://www.hacm.org/applying/pdf/High-rise_Information_for_App_Flyer_6_2013.pdf

and

<http://low-income-housing.findthebest.com/l/30925/Cherry-Court-Midrise>

Applying the applicable deductions to Petitioner’s income we have the following net income calculation:

| | | | |
|------------------------------------|------------|------------------------|-----------|
| Gross Income | \$824.78 | Rent | \$235.00 |
| No Earned Income Deduction | | HSUA | +450.00 |
| Standard Deduction | -\$152.00 | 50% Net income | -\$336.39 |
| No Medical Expenses exceeding \$35 | | | |
| No Dependent Care Expenses | | Excess Shelter Expense | \$348.61 |
| <hr/> | | | |
| Net Income | \$672.78 | | |
| Excess Shelter Expense | - \$348.61 | | |
| <hr/> | | | |
| Net Income | \$324.17 | | |

Individuals, in a household of one, with a net income of \$324.78 qualify for a FoodShare allotment of \$91.00 per month. FSH §8.1.2

CONCLUSIONS OF LAW

The agency incorrectly determined the Petitioner's FoodShare allotment.

THEREFORE, it is

ORDERED

That the agency issue to the Petitioner FoodShare benefits totaling \$91.00 per month, effective July 1, 2014. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of September, 2014.

\sMayumi M. Ishii
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 16, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability