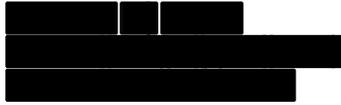




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159972

PRELIMINARY RECITALS

Pursuant to a petition filed August 15, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Washburn County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on September 24, 2014, at Shell Lake, Wisconsin.

The issue for determination is whether the petitioner remains eligible for FoodShare.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

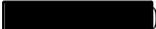
Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Rosanne Livingston  
Washburn County Department of Social Services  
110 W 4th Avenue  
PO Box 250  
Shell Lake, WI 54871

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien  
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Washburn County. She lives alone.
2. The petitioner receives \$1,566.30 per month in unemployment benefits.
3. The agency did not provide any decision notices or other documentation showing how it determined the petitioner's benefits.

4. For a one-person household, 130% of the federal poverty level is \$1,245 and 200% is \$1,916. *FoodShare Wisconsin Handbook*, § 8.1.1.
5. The county agency seeks to end the petitioner's FoodShare benefits because it contends her gross income exceeds the program's limit.

### DISCUSSION

FoodShare benefits and eligibility depend upon income and the size of the household. A person cannot receive FoodShare if her income exceeds the program's gross income limit. Wisconsin FoodShare policy states that "[m]ost FoodShare groups are considered categorically eligible if their gross income is at or below 200%" of the federal poverty level. *FoodShare Wisconsin Handbook*, § 4.2.1.1. The only exceptions to this rule are for those with felony drug convictions and those who have been found to have committed an intentional policy violation of the program. *Id.* For households that are not categorically eligible, the income limit is 130% of the federal poverty level. *FoodShare Wisconsin Handbook*, § 81.1. For a one-person household, the size of the petitioner's, 130% of the federal poverty level is \$1,245 and 200% is \$1,916. *Id.* Household income includes all income from any source unless FoodShare regulations specifically exclude it. 7 CFR § 273.9(a)(b).

The county agency seeks to end the petitioner's benefits because she now receives \$1,566.30 per month in unemployment benefits and thus exceeds 130% of the federal poverty level. The problem with the agency's case is that it did not present any evidence, or even claim, that the petitioner has been found to have intentionally violated the FoodShare program's rules or is a drug felon. Both parties indicated that she had not committed an intentional program violation, and my own review of Wisconsin's online circuit court access database did not bring up any criminal convictions. If she does not fall into one of these two categories, she remains eligible for benefits because her income is less than 200% of the federal poverty level. When she first became eligible she had no income, but she now receives unemployment benefits. Because her income has increased, she should receive less FoodShare now. However, the agency did not provide any decision notices or other documentation showing how it calculated her benefits. It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. By seeking to reduce the petitioner's benefits, the agency is the moving party. The Department acknowledged the principle laid down in *Hanson* in *Final Decision ATI-40/87198*, where Deputy Secretary Richard Lorang ruled on August 17, 1995, that in any fair hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case. Because the agency has not presented enough evidence for me to determine what her current FoodShare allotment should be, I am going to continue that allotment at its current level. The agency can bring a new action to reduce or eliminate her benefits when it has sufficient evidence to do so, but it cannot bring an overpayment action to recover benefits she will already have received as a result of this decision.

### CONCLUSIONS OF LAW

The county agency has not presented a prima facie case to reduce the petitioner's FoodShare benefits.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take all steps necessary to ensure that the petitioner continues receiving FoodShare benefits at her current level. Nothing in the decision prevents the agency from taking further action to reduce her benefits.

## 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 25th day of September, 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 September 25, 2014.

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