



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/160271

PRELIMINARY RECITALS

Pursuant to a petition filed August 27, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on September 25, 2014, at Kenosha, Wisconsin.

NOTE: The record was held open to give the Petitioner an opportunity to submit verification of low income housing. On September 30, 2014, the Petitioner submitted a letter from Metropolitan Associates Government Housing Department, advising her of the results of her recertification for HUD subsidized housing, along with the signature page and a HUD Owners Certification of Compliance. Petitioner also submitted a U.S. Cellular Bill. The Petitioner's submission has been marked collectively as Exhibit 10 and entered into the record.

The issue for determination is whether the Kenosha County Human Service Department (the agency) correctly determined the Petitioner's FoodShare allotment, effective September 1, 2014.

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: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. The Petitioner completed a FoodShare renewal on July 28, 2014. (Exhibit 7)
3. On August 8, 2014, the agency sent the Petitioner a notice indicating that her FoodShare benefits would be reduced from \$87.00 per month to \$15.00 per month, effective September 1, 2014. (Exhibit 2)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 27, 2014. (Exhibit 1)
5. Petitioner's assistance group size is one. (Testimony of Petitioner)
6. She receives Social Security Disability Income in the amount of \$804.78 per month. (Testimony of Petitioner; Exhibit 5)
7. Petitioner rents an apartment in low-income / HUD subsidized housing and pays \$194.00 per month in rent. (Testimony of Petitioner; Exhibit 10)
8. Heat is included in the rent. (Exhibit 10)
9. Petitioner does not have out of pocket medical expenses that are more than \$35.00 per month. (Testimony of Petitioner)

**DISCUSSION**

Petitioner filed an appeal to contest the reduction of her 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) a deduction for certain 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 exceeding \$35.

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

Petitioner did not report any child care expenses.

- (5) a shelter and utility expenses deduction 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 who were not receiving energy assistance. (Id.) Consequently, many of those households lost the HSUA deduction.

In summary, 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.*

The Petitioner lives in subsidized housing where heat is included in the rent. (See Exhibit 10) As such, the Petitioner falls into the above stated exception.

Applying the applicable deductions to Petitioner’s income we have the following net income calculation for September 1, 2014:

Gross Income	\$804.78	Rent	\$194.00
No Earned Income Deduction		HSUA	+450.00
Standard Deduction	-\$152.00	50% Net income	-\$326.39
No Medical Expenses exceeding \$35			
No Dependent Care Expenses		<u>Excess Shelter Expense</u>	<u>\$317.61</u>
<u>Net Income</u>	<u>\$652.78</u>		
Excess Shelter Expense	- \$317.61		
<u>Net Income</u>	<u>\$335.17</u>		

As of September 1, 2014, individuals, in a household of one, with a net income of \$335.17 qualify for a FoodShare allotment of \$99.00 per month. FSH §8.1.2

**CONCLUSIONS OF LAW**

The agency did not correctly determine the Petitioner’s Foodshare allotment effective September 1, 2014.

**THEREFORE, it is ORDERED**

That the agency issue to Petitioner FoodShare benefits totaling \$99 per month, effective September 1, 2014. The agency shall take all administrative steps to complete this task within 10-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).

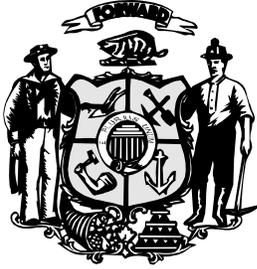
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson 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 17th day of October, 2014.

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\sMayumi M. Ishii  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 17, 2014.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability