



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/160583

PRELIMINARY RECITALS

Pursuant to a petition filed September 13, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on November 20, 2014, at Waukesha, Wisconsin.

NOTE: A hearing was originally scheduled for October 9, 2014. The Petitioner did not appear within 15 minutes of the appointed time and on October 10, 2014, the appeal was dismissed as abandoned. On October 24, 2014, the Petitioner filed a rehearing request, indicating that he did not intend to abandon his appeal, and that he had actually shown up at the county agency 30 minutes late. On November 5, 2014, the Petitioner's rehearing request was granted.

The issue for determination is whether Waukesha County Health and Human Services (the agency) correctly reduced the Petitioner's FoodShare allotment effective September 1, 2014.

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: Bonnie Gomez, Economic Support Specialist
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On August 21, 2014, the Petitioner completed a FoodShare renewal, at which time the Petitioner reported that heat is included in his rent. Consequently, the agency did not give the Petitioner the Heating Standard Utility Allowance (HSUA) when calculation is Foodshare allotment. (Exhibits 5 and 10)
3. At some point the Petitioner was notified that his FoodShare allotment would be \$48.00 per month, effective September 1, 2014. The Petitioner called the agency on August 27, 2014 to contest the determination. The agency explained that due to a change in policy, the Petitioner was no longer eligible for the HSUA, and that this caused his benefits to go down. (Exhibit 10)
4. On September 8, 2014, the agency sent the Petitioner a notice indicating that effective October 1, 2014, his FoodShare benefits would be increased from \$48.00 to \$55.00 per month. (Exhibit 7)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 13, 2014. (Exhibit 1)
6. On September 18, 2014, the Petitioner contacted the agency and indicated that \$100 of his \$500 rent goes to pay for utilities. Consequently, the agency allowed the Petitioner to receive the full HSUA. (Exhibit 10)
7. On September 19, 2014, the agency sent the Petitioner a notice indicating that effective September 1, 2014, his FoodShare benefits would be increased from \$55.00 to \$149.00 (Exhibit 8)
8. On October 2, 2014, Ms. Gomez spoke to the Petitioner's landlord who indicated the Petitioner does not have a separate heating expense and that the Petitioner's rent includes heat. The agency received verification of this from the Respondent's landlord on October 8, 2014. (Testimony of Ms. Gomez; Exhibits 3 and 10)
9. On October 13, 2014, the agency sent the Petitioner a notice indicating that effective November 1, 2014, his benefits would be reduced from \$149.00 per month to \$55.00 per month. (Exhibit 9)
10. The Petitioner lives alone; he pays rent in the amount of \$500 per month. Heat is included in the rent. The Petitioner does not pay a separate utility bill for heat. (Exhibit 3 and 4)
11. Petitioner's sole source of income is Social Security Disability Income in the amount of \$817.00 per month. (Exhibits 5 and 7-9)
12. Petitioner pays a phone bill. (Exhibit 5)

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 –

Effective October 1, 2014, this was \$155.00 for an assistance group of 1-3 people, prior to this the deduction was \$152.00; 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 him.

- (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 that exceed \$35.00 per month.

- (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 \$490 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) 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, \$446 prior to October 1, 2014, it was \$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 \$446 HSUA. (Ops Memo 14-16) Consequently, Effective April 1, 2014, the State of Wisconsin stopped providing the \$1.00 energy assistance to households not who were not receiving energy assistance. (Id.) Consequently, many of those households, like the Petitioner lost the HSUA deduction.

Petitioner pays a phone bill, and so is entitled to the \$30.00 Phone Utility Allowance.

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

Gross Income	\$817.00	Rent	\$500.00
No Earned Income Deduction		HSUA	+\$30.00
Standard Deduction	-\$152.00	50% Net income	-\$332.50
No Medical Expenses exceeding \$35			
No Dependent Care Expenses		<u>Excess Shelter Expense</u>	<u>\$197.50</u>
<u>Net Income</u>	<u>\$665.00</u>		
Excess Shelter Expense	- \$197.50		
<u>Net Income</u>	<u>\$467.50</u>		

In September 2014, individuals, in a household of one, with a net income of \$467.50 qualified for a FoodShare allotment of \$48.00 per month. FSH §8.1.2

In October 2014, adjustments were made for an increase in cost of living. So for October and November 2014, Petitioner’s allotment calculation should have looked as follows:

Gross Income	\$817.00	Rent	\$500.00
No Earned Income Deduction		HSUA	+\$30.00
Standard Deduction	-\$155.00	50% Net income	-\$331.00
No Medical Expenses exceeding \$35			
No Dependent Care Expenses		<u>Excess Shelter Expense</u>	<u>\$199.00</u>
<hr/>			
Net Income	\$662.00		
Excess Shelter Expense	- \$199.00		
<hr/>			
Net Income	\$463.00		

Effective October 1, 2014, individuals, in a household of one, with a net income of \$463.00 qualified for a FoodShare allotment of \$55.00 per month. FSH §8.1.2

According to the Notices of Decision, the agency issued to the Petitioner, \$149 per month in FoodShare benefits for September and October 2014; as such, it would appear that the agency actually over-issued benefits to the Petitioner. However, the record does not contain the FoodShare History Disbursement print out. As such, it is not clear if this is what, in fact, happened. The case comments indicate there were some difficulties with issuing the disbursements. As such, I will leave it to the agency to determine the actual amount issued and I will leave it to the agency’s discretion under 7 C.F.R. §273.18(e)(2) to decide whether it would be cost-effective to seek a recoupment.

For November 2014, the agency correctly calculated the Petitioner’s FoodShare allotment.

The Petitioner argues that it is not fair to deny him the HSUA, when his landlord uses a portion of his rent to pay heating and electric bills. However, the Food Share Wisconsin Handbook clearly states that in order to receive the HSUA, a person must be obligated to pay or actually paying for a heating source. *FSH §4.6.7.3* The Petitioner is obligated to pay his landlord rent, which includes heat, but the Petitioner is not obligated to pay WE Energies anything. Further, the Petitioner is not actually paying a separate utility bill for heat. As such, he is not entitled to the HSUA.

CONCLUSIONS OF LAW

- 1) The agency did not correctly calculate the Petitioner’s FoodShare benefits for September and October 2014; it over-issued benefits.
- 2) The agency correctly calculated the Petitioner’s FoodShare benefits for November 2014 going forward.

THEREFORE, it is

ORDERED

That the agency review the Petitioner’s case to determine whether it must seek a recoupment of the benefits it over-issued in September and October 2014. The agency shall take all administrative steps to complete this task within ten days of this decision.

In all other respects the petition is dismissed.

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 24th day of November, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



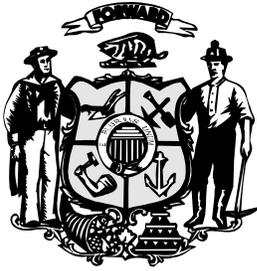
State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 24, 2014.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability



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