



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/161053

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Barron County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 22, 2014, at Barron, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of FoodShare that occurred because of the agency's error.

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: Candi Gillette

Barron County Department of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Barron County.
2. The Department seeks to recover \$350 in FoodShare the petitioner received in August 2014.
3. The petitioner lives with two other persons.

4. The petitioner's household received \$1,530.28 in earned and \$462.92 in unearned income in August 2014.
5. The petitioner pays for her electricity but does not pay rent at her dwelling.
6. The petitioner's household received \$400 in FoodShare in August 2014.

DISCUSSION

Federal regulations require state agencies to “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. The county agency incorrectly excluded some of the petitioner's earned income when determining her household's FoodShare allotment in August 2014. Her household received \$400 in FoodShare that month, but the county agency determined that she was only entitled to \$50. Later, after using more up-to-date income, it determined that she should have received only \$36 in benefits that month, but it does not seek to recover the additional \$14.

The size of a FoodShare allotment depends upon household 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). There are three persons in the petitioner's household. Her household received \$1,530.28 in earned and \$462.92 in unearned income in August 2014. She is entitled to the \$152 standard deduction allowed for households with up to three members. *FoodShare Wisconsin Handbook*, § 4.6.2 and 8.1.3; 7 CFR § 273.9(d)(1). She is also entitled to an earned income deduction equal to 20% of her \$1,530.28 earned income, or \$306.05.

The last deduction she is potentially entitled to is the shelter deduction, which equals the amount that housing costs exceed 50% of the net income remaining after all other deductions are subtracted from gross income. Those who pay their own electricity get a \$153 standard utility allowance as part of their shelter deduction. *FoodShare Wisconsin Handbook*, § 4.6.7; 7 C.F.R. § 273.9(d)(6)(ii); *FoodShare Wisconsin Handbook*, § 8.1.3. She does not pay any rent, so this is her entire shelter cost. Because it is less than half of \$1,535.15, the amount left after deducting her \$152 standard allowance and \$306.05 earned income deduction from her gross income, she is not entitled to the utility deduction. This means that her net income is \$1,535.15. The FoodShare allotment for a three-person household with this income was \$36 in August 2014. *FoodShare Wisconsin Handbook*, § 8.1.2. Although this results in a \$364 overpayment, I will accept the agency's figure and leave the overpayment at \$350.

CONCLUSIONS OF LAW

The county agency correctly seeks to recover a FoodShare overpayment that occurred because of its own error.

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 6th day of November, 2014

\sMichael D. O'Brien
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 6, 2014.

Barron County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability