



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/161302

PRELIMINARY RECITALS

Pursuant to a petition filed October 15, 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 November 06, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined the Petitioner's FoodShare benefits effective August 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: Katherine May, HSPC Sr.
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 July 28, 2014, the Petitioner completed his renewal. (Exhibit 2, pg. 8)
3. On July 29, 2014, the agency sent the Petitioner a notice indicating that effective August 1, 2014, his FoodShare benefits would be \$20.00 per month. (Exhibit 3)

4. On September 8, 2014, the agency sent the Petitioner a notice indicating that his FoodShare benefits would go up to \$26.00 per month, effective October 1, 2014. (Exhibit 4)
5. Petitioner lives alone and pays \$243.00 per month in rent, heat included. Petitioner does not pay any other utilities. (Testimony of Petitioner)
6. Petitioner lives in subsidized housing. (Testimony of Petitioner; See also the HUD website at: <http://www.hud.gov/apps/section8>)
7. Petitioner receives \$713.50 per month in Social Security Disability Income. (Exhibit 2, pg. 16)

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 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 over \$35.00.

- (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).

Effective October 1, 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). Previously the cap was \$478 per month. FSH, §3.8.1.1.

FSH, §§ 4.6.7.1 and 8.1.3.

Before April 28, 2014, Federal Regulations used to allow 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, \$490, 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 \$450 HSUA. (Ops Memo 14-16) Consequently, Effective April 1, 2014, the State of Wisconsin stopped providing the \$1.00 energy assistance to households who were not receiving energy assistance. (Id.) Consequently, many of those households lost the HSUA deduction.

The only exception to the rule was if a person lived in subsidized housing and heat was included in the housing costs. *FoodShare Wisconsin Handbook §4.6.7.3 Release 13-02, effective until October 17, 2014* In that circumstance, the heating bill was considered as being paid by energy assistance and the household was entitled to the full HSUA. *Id.*

Because Petitioner lives in subsidized housing, he was entitled to the full HSUA through October 2014.

Applying the applicable deductions to Petitioner's income we have the following net income calculation for August 1, 2014 to September 30, 2014:

Gross Income	\$713.50	Rent	\$243.00
No Earned Income Deduction		HSUA	+450.00
Standard Deduction	-\$152.00	50% Net income	-\$280.75
No Medical Expenses exceeding \$35			
No Dependent Care Expenses			
			<hr/>
		Excess Shelter Expense	\$412.25
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Net Income	\$561.50		
Excess Shelter Expense	- \$412.25		
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Net Income	\$149.25		

Between August 1, 2014 and September 30, 2014, individuals, in a household of one, with a net income of \$149.20 qualified for a FoodShare allotment of \$144 per month. FSH §8.1.2

Effective October 1, 2014, allowance amounts and deductible amounts changed. Thus, effective October 1, 2014, Petitioner's income calculation worked out to be as follows:

Gross Income	\$713.50	Rent	\$243.00
No Earned Income Deduction		HSUA	+490.00
Standard Deduction	-\$155.00	50% Net income	-\$279.25
No Medical Expenses exceeding \$35			
No Dependent Care Expenses			
			<hr/>
		Excess Shelter Expense	\$453.75
<hr/>			
Net Income	\$558.50		
Excess Shelter Expense	- 453.75		
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Net Income	\$104.75		

Beginning October 1, 2014, individuals with net income of \$104.75 qualified for \$162 in FoodShare benefits.

Petitioner should note, however, that the Department of Health Services released a new FoodShare Handbook (FSH), version 14-03, that became effective October 17, 2014. This new version of the FSH eliminated the full HSUA for individuals living in subsidized housing.

Ms. May testified that this change would normally affect individuals as their six month report forms or renewals become due. However, unlike the April 2014 policy change discussed in Ops Memo 14-16; the

FoodShare manual does not indicate a delayed application of the new rule eliminating the HSUA for individuals in subsidized housing. I note that the effective date of the change was the 17th of the month, which is the date for Adverse Action (the last day before a change can be made effective for the following month).

Consequently, the loss of the HSUA affects the Petitioner’s November 2014 benefits as follows:

Gross Income	\$713.50	Rent	\$243.00
No Earned Income Deduction		No utility allowances	
Standard Deduction	-\$155.00	50% Net income	-\$279.25
No Medical Expenses exceeding \$35			
No Dependent Care Expenses		<hr/>	Excess Shelter Expense \$0
<hr/>			
Net Income	\$558.50		
Excess Shelter Expense	- 0		
<hr/>			
Net Income	\$558.50		

Individuals with a net income of \$558.50 qualify for FoodShare benefits in the amount of \$26.00 per month.

CONCLUSIONS OF LAW

- 1) The agency did not correctly determine the Petitioner’s FoodShare allotment for August, September and October 2014.
- 2) The agency correctly determined the Petitioner’s FoodShare allotment for November 2014, going forward.

THEREFORE, it is

ORDERED

That for the months of August and September 2014, the agency issue to the Petitioner, FoodShare benefits totaling \$144 per month and for October 2014 the agency shall issue to the Petitioner FoodShare benefits totaling \$162 per month. The agency shall take all administrative steps to complete this task within 10-days of this decision.

The petition in all other respects is dismissed.

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 14th 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 14, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability