



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/161305

PRELIMINARY RECITALS

Pursuant to a petition filed October 15, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Eau Claire County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 18, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the county agency correctly determined the petitioner's FoodShare allotment.

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: Sheila Morden

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County. He lives alone.
2. The county agency notified the petitioner on October 17, 2014, that his FoodShare allotment would fall from \$131 to \$16 per month on November 1, 2014.

3. The petitioner receives \$991 per month in social security. He does not receive any other income.
4. The petitioner pays \$600 a month for rent. His utilities are included in his rent.

DISCUSSION

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). The county agency reduced the petitioner’s FoodShare allotment from \$131 to \$16 per month, mainly because recipients no longer receive a utility allowance if their utilities are included in their rent. *The Agriculture Act of 2014*, Title IV, § 4006; 7 C.F.R. § 273.9(d)(6)(ii); 7 CFR § 273.9(d)(3) referring to 7 CFR § 271.2.

The petitioner contends that the state cannot eliminate the utility allowance because the United States Constitution prohibits it from reducing a benefit unless it replaces the reduction with another benefit of equal value. I have no authority to consider this novel argument because administrative law judges have no equitable powers and must confine their decisions to the four corners of the law. *See Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). As noted, the law requires me to base my decision on the petitioner’s gross income less those deductions specifically allowed by law.

The petitioner’s monthly gross income consists of \$991 per month in social security. He is entitled to the \$155 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). He is not entitled to an earned income deduction because social security benefits are not considered earned income. *See* 7 CFR § 273.9(d)(2).

The only other deduction he 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 heat get a \$446 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. Wisconsin had been granting the utility allowance to those whose utilities were included in their rent by granting them \$1 annual energy assistance payment, but the current farm bill requires households whose heating costs are included in their rent to receive at least \$20 a year in heating assistance to qualify for utility allowance. Most states that had provided \$1 a month in energy assistance raised the heating assistance benefit to \$20, but Wisconsin did not. This means that the petitioner’s only shelter cost is his \$600 monthly rent. Deducting the \$155 standard allowance from his \$991 gross income, leaves him with \$836. Half of this is \$418. His shelter deduction is the difference between this and \$600, or \$182. Subtracting this and the \$155 standard deduction from his \$991 gross income leaves net income of \$654. The FoodShare allotment for a one-person household, the size of the petitioner’s, with this income is \$16. *FoodShare Wisconsin Handbook*, § 8.1.2. Because this is what the agency determined, I must uphold its decision.

At the end of the hearing, the petitioner indicated that he was going to appeal any adverse decision to the circuit court. He has the right to do this, and a circuit court judge, unlike an administrative law judge, can consider constitutional arguments. That the circuit court has this authority does not guarantee that its view of the constitution will conform to the petitioner’s.

CONCLUSIONS OF LAW

1. The petitioner is not entitled to the Heat Utility Standard Allowance because his utilities are included in his rent.
2. The county agency correctly determined the petitioner’s FoodShare allotment.

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 18th day of November, 2014

\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 November 18, 2014.

Eau Claire County Department of Human Services
Division of Health Care Access and Accountability