



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[Redacted]  
[Redacted]  
[Redacted]

DECISION

FOO/161378

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 20, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Dane County Dept. of Human Services to reduce FoodShare benefits (FS), a hearing was held on December 9, 2014, by telephone. A hearing set for November 13, 2014 was rescheduled at the petitioner's request.

The issue for determination is whether the county correctly determined petitioner's FS after a review.

**PARTIES IN INTEREST:**

Petitioner:

[Redacted]  
[Redacted]  
[Redacted]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Terry Donnelly  
Dane County Dept. of Human Services  
1819 Aberg Avenue  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [Redacted]) is a resident of Dane County.
2. Petitioner receives FS for a one-person household. In October, 2014 she received \$194 FS.
3. Petitioner had a review in October. At that time she was receiving \$956 monthly social security, and \$15 monthly from a part-time job. Petitioner also owns a rental property, and she submitted her 2013 Schedule E supplemental income tax return. The return showed net income to be \$191, with depreciation of \$2,145.

4. By a notice dated October 17, 2014, the county informed petitioner that her FS would decrease from \$194 to \$158 effective November 1, 2014. The primary change was the addition of \$194.66 self-employment income, mostly from the depreciation divided by twelve.

### DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipients' nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$155 per month. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FS Handbook, App. 4.6.7. The maximum shelter deduction is \$490 unless the household includes an elderly or disabled individual; in those cases there is no shelter cap. Handbook, App. 8.1.3. and 4.6.7.1.

Treatment of self-employment income is described at 7 C.F.R. §273.11(a). Such income is annualized over a 12-month period, unless the income is intended to meet the household's needs over a shorter period. §273.11(a)(1)(i) and (iii). To determine monthly income, the agency must take yearly net income, add back in depreciation, net loss carryovers, and personal expenses, and then divide by twelve. §273.11(a)(2) and (4). If the business has had a substantial change or if it has been operating less than one year, the agency shall use a system of anticipating income. §273.11(a)(1)(i) and (iv).

Petitioner's main concern is that her expenses outweigh her income. In particular she has had to make home repairs. However, home repairs are not an item that can be used in determining the shelter deduction unless they are made following a natural disaster. Handbook, App. 4.6.7.2.

I must conclude that the agency correctly determined petitioner's FS following her review. The amount of FS is based upon the strict formula described above. Neither the county agency nor the Division of Hearings and Appeals has authority to make exceptions to the formula. This office can determine only that an error was made in the calculation; if the calculations were correct, the amount of monthly FS is set.

### CONCLUSIONS OF LAW

The county correctly determined petitioner's FS after adding in her self-employment income following her review.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 15th day of December, 2014

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\sBrian C. Schneider  
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 December 15, 2014.

Dane County Department of Human Services  
Division of Health Care Access and Accountability