



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/161795

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 07, 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 December 02, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined the Petitioner's FoodShare allotment effective December 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: Pang Thao-Xiong, Income Maintenance Specialist Advanced  
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 November 3, 2014, the agency sent the Petitioner a notice indicating that her FoodShare benefits would be going down from \$340.00 to \$155.00 per month, effective December 1, 2014. (Exhibit 2, pgs. 9-13)

3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 7, 2014. (Exhibit 1)
4. The Petitioner's assistance group consists of four people. (Testimony of the Petitioner)
5. The Petitioner pays \$700 per month in rent and pays a separate heating utility. (Testimony of Petitioner; Exhibit 3)
6. The Petitioner receives \$541.00 per month in Federal Social Security Disability Benefits and \$66.03 in State Supplemental Security Income. Together, Petitioner's SSI income is \$607.03 per month. (Exhibit 4; Testimony of Petitioner)
7. Petitioner's husband receives the same amounts for Federal and State SSI payments. (Id.)
8. Petitioner receives \$400 per month in caretaker supplement benefits. (Testimony of Ms. Thao-Xiong; Testimony of the Petitioner)
9. Petitioner also receives \$94.85 per week in child support. (Testimony of Petitioner; Exhibit 2, pg. 7) The three month average for August, September and October 2014 worked out to be \$411.01 per month. (Exhibit 2, pg. 7)

### DISCUSSION

Petitioner filed an appeal to contest the reduction of her 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 \$165.00 for an assistance group of 1-3 people, 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.

- (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.

At the hearing, the Petitioner stated that she thinks it is unfair and wrong to count her unearned income. First, Petitioner’s argument is an equitable argument, meaning it is based upon what she believe is fair or unfair. However, Administrative Law Judges do not have equitable authority, but must follow the law as written. See *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944) and *Oneida County v. Converse*, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993). Second, the FoodShare regulations state that unearned income must be counted, unless it is specifically exempt. *FSH 4.3.4.1* Net SSI payments, Caretaker Supplement payments, and child support payments are types of unearned income that must be counted. *FSH 4.3.4.1 ¶ 4, 10 and 12.*

Petitioner’s countable household income works out to be as follows:

\$541.00 Petitioner Fed SSI
+\$66.03 Petitioner’s State SSI
+\$541.00 Petitioner’s spouse’s Fed SSI
+\$66.03 Petitioner’s spouse’s State SSI
+\$400.00 Caretaker Supplement Benefit
+\$411.01 Child Support Income
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\$2025.07 Total Income

Petitioner’s allotment calculation for December 1, 2014 forward works out to be as follows:

Gross Income	\$2025.07	Rent	\$700.00
No Earned Income Deduction		HSUA	+\$446.00
Standard Deduction	-165.00	50% Net income	-\$930.03
No Medical Expenses exceeding \$35			
No Dependent Care Expenses		<hr/>	Excess Shelter Expense \$215.97
<hr/>			
Net Income before Shelter Expense	\$1860.07		
Excess Shelter Expense	- \$215.97		
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Net Income	\$1644.10		

Individuals, in a household of four, with a net income of \$1644.10 qualify for a FoodShare allotment of \$155.00 per month. *FSH §8.1.2*

**CONCLUSIONS OF LAW**

The agency correctly determined the Petitioner’s FoodShare allotment effective December 1, 2014.

**THEREFORE, it is ORDERED**

That the petition 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 12th day of December, 2014.

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\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 December 12, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability