



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/161796

PRELIMINARY RECITALS

Pursuant to a petition filed November 10, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 23, 2014, by telephone. A hearing set for November 26, 2014, was rescheduled at the petitioner's request.

The issue for determination is whether the Department correctly determined that the petitioner's FS monthly allotment is \$155.

There appeared at that time 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: Joan Corcoran, ES Spec.

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. The petitioner has an ongoing FS case as a household of one person. His case was due for an annual review in October 2014. He submitted a review form on October 27, and reported no self-employment income, a \$400 rent expense, and a utility (electricity) expense. The Consortium worker who handled his telephonic review interview (not Ms. Corcoran) on October 31 was suspicious of the petitioner's utility question response, so she issued a verification request letter on November 3, 2014. That letter set a premature verification deadline of November 6.
3. Because the verification was not received by November 6, the Department issued written notice on November 7, advising that the petitioner's FS for November onward were being calculated with no deduction for the utility standard. The new FS monthly allotment was \$30.00, which was a reduction from the \$151 issued for October 2014. On November 17, 2014, a different worker looked at his case and issued a new verification request letter. That letter sought utility expense verification, due by November 26, 2014. He submitted utility verification on November 25, 2014.
4. Prior to hearing, the agency worker above corrected the utility information in the petitioner's case. On November 26, 2014, a notice was issued to the petitioner advising that his FS allotment would increase to \$155 effective December 1, 2014. On the same date, another notice advised that the petitioner would receive a \$125 supplement for December 2014, to bring his total December benefits up to \$155. The notice did not advise that the petitioner's November allotment would be supplemented.
5. The petitioner's gross income consists of \$804.78 SSI. He has a shelter expense of \$400, plus utilities. He does not pay out child support, and does not incur a dependent care expense to go to work.

DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for November and December 2014. The gross income consisted solely of the petitioner's undisputed \$804.78 in monthly SSI income. The budgeting calculations here were performed prospectively. Prospective budgeting should reflect what the petitioner is likely to receive, on average, each month. *FS Wisconsin Handbook (FSWH)*, 4.1.1, viewable online at www.emhandbooks.wisconsin.gov/fsh/.

In calculating the petitioner's November allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county start with gross, rather than net, income, and allow only a limited number of identified deductions from that income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a case with one to three persons is currently set at \$152, per *FS Wisconsin Handbook*, 8.1.3. Twenty percent of any earned income is then subtracted as the Earned Income Deduction; that deduction was correctly not given here. A Dependent Care Deduction is also taken if the petitioner incurred day care expenses in order to go to work, an Excess Medical Expense Deduction is subtracted for an elderly or disabled person's allowable medical expenses that exceed \$35 per month, and child support paid out garners a deduction. There is no record of the latter three expenses here. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of that income. 7 C.F.R. §273.9(d)(6)(ii). Based on a \$400 shelter cost plus the \$450 heating utility standard, the petitioner's shelter costs totaled \$850. This did exceed half of the adjusted income (\$326.39), so the shelter cost difference of \$523.61 was deducted in the allotment calculation.

Thus, the November 2014 allotment calculation correctly looked like this:

Gross income	804.78
Minus Earned Inc. Deduction	- 000.00
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-152.00</u>
Adjusted Income	652.78
Minus Shelter Deduction	<u>-523.61</u>
Net Income	129.17

The correct allotment for one person with net income of \$129 was \$155 in November and December, 2014. *FS Wisconsin Handbook*, 8.1.2, p.2. The petitioner inquired as to why he does not receive the \$189 maximum allotment for one person; the \$189 allotment is for a person with zero net income. The petitioner has net income greater than zero.

The Department correctly issued benefits totaling \$155 to the petitioner for December. However, based on the record before me, it appears that the department erred in not supplementing benefits up to \$155 for November. The first, November 6 verification deadline was too short, and the petitioner complied with the second, correct verification deadline of November 26. Thus, he should have received \$155 for November. If the agency has subsequently supplemented his November benefits, this paragraph can be disregarded.

CONCLUSIONS OF LAW

1. Eventually, the Department correctly determined the petitioner’s FS allotment for December 2014.
2. The Department should have issued FS benefits totaling \$155 to the petitioner for November 2014.

THEREFORE, it is

ORDERED

That the petition is *remanded* to the agency with instructions to supplement the petitioner’s November 2014 FS benefits up to the level of \$155 within 10 days of the date of this Decision, if it has not already done so. In all other respects, the petition 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 2nd day of February, 2015

\sNancy J. Gagnon
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 February 2, 2015.

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