



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

FOO/162905

PRELIMINARY RECITALS

Pursuant to a petition filed December 29, 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 February 3, 2015, at Madison, Wisconsin.

The issue for determination is whether the Department correctly calculated the petitioner's FS allotment for January 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name and address]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Bridget Bell, ESS
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 three persons. In fall 2014, she was on maternity leave from her job, so her only income was child support. In late November 2014, she

reported her return to work, and updated earned income was verified. The employer verified pay of \$13.52 hourly, an average of 60 hours per bi-weekly pay period, and tips, for gross monthly income of \$2,115.94 (calculated per FS regulation). Child support averaging \$266.87 monthly is also received.

3. On November 26, 2014, the Department issued written notice to the petitioner advising that her FS would be reduced from \$511 to \$86 effective January 1, 2015. The basis for reduction was increased earned income. The petitioner timely appealed, and aid was continued pending appeal.
4. The petitioner has a shelter expense of \$845, plus utilities. She does not pay out child support, and is not elderly or disabled. Prior to February 2015, she had not reported to the Department that she was incurring a dependent care expense to go to work.

**DISCUSSION**

The petitioner questions the correctness of the calculation of the FS allotment amount for January 2015, onward. The gross income was based on an employer verification letter, and the employer’s statement to the agency regarding tip income (\$371.86) for the petitioner. There is no dispute as to the petitioner’s hourly wage, the employer’s report of the range of hours worked, or the agency’s arithmetic in averaging those paystubs. The petitioner testified that her hours have become more variable, in a downward direction. She was encouraged to report such a decrease, verified by 30 days’ paystubs, to the agency to affect her benefits going forward. 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/](http://www.emhandbooks.wisconsin.gov/fsh/). For earned income that is received biweekly, the agency is directed to develop a biweekly average, and then multiply that figure by 2.15 to account for three-paycheck months. For weekly income, the multiplier is 4.3. 7 C.F.R. §273.10(c)(2).

In calculating the petitioner’s January 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 \$155, 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 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 reporting 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 \$845 shelter cost plus the \$446 heating utility standard, the petitioner’s shelter costs totaled \$1,291. This did exceed half of the adjusted income (\$902.31), so the excess shelter cost of \$388.69 was deducted in the allotment calculation.

Thus, the January 2015 allotment calculation correctly looked like this:

Gross income	2382.81
Minus Earned Inc. Deduction	- 423.18 (20% of \$2,115.94)
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-155.00</u>
Adjusted Income	1804.63

Minus Shelter Deduction	<u>-388.69</u>
Net Income	1415.94

The correct allotment for three persons with net income of \$1,415.94 was \$86 in January 2015. *FS Wisconsin Handbook*, 8.1.2, p.13.

The petitioner stated at hearing that she has a dependent (child) care expense since returning to work. As this was not reported prior to January 1, it does not affect the January allotment calculation. Assuming that the petitioner verifies her child care expense to the agency, a deduction for this cost can be given in future FS allotment calculations.

**CONCLUSIONS OF LAW**

1. The Department correctly determined the petitioner’s FS allotment for January 2015.

**THEREFORE, it is** **ORDERED**

That 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 5th day of February, 2015

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 5, 2015.

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