



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/162915

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 amount of the petitioner's FS benefits for January 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: David Bernhardt, 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. In early December 2014, the Department received a notification from the Social Security Administration database that the

petitioner's gross monthly Social Security Retirement income would increase from \$914.00 to \$930, effective with the January 2015 payment.

3. On December 8, 2014, the Department issued written notice to the petitioner advising that his FS would be reduced from \$65 to \$58 effective January 1, 2015. The basis for reduction was increased income. Exhibit 3. The petitioner timely appealed, and aid was ordered continued pending appeal.
4. The petitioner did receive a gross Social Security payment of \$930 on approximately January 3, 2015. He has a shelter expense of \$266, and was given the utility standard deduction. He does not pay out child support, does not incur a dependent care expense to go to work, and has not verified out of pocket medical expenses exceeding \$35 monthly.

DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for January 2015. The gross income was based on computer database information received from the Social Security Administration. There is no dispute that he received a gross Social Security payment of \$930 during the month of January 2015. 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/. 7 C.F.R. §273.10(c)(1)(i) & (2).

The petitioner argues that his Social Security raise should not have been budgeted in his January allotment because he did not receive it by January 1, 2015. He received it a few days later, still in the month of January. His argument fails. The prospective budgeting instructions given to the agency direct it to regular income that will be received *any time* during month, and intended for that month, to be budgeted for that month:

4.3.4.1 Unearned Income Introduction

Unearned income is income not gained by work or delivery of a service or product. ...

Count unearned income as income in the month that it is received, except when:

1. It isn't available to the **FS** group.
2. You're told otherwise by specific instructions in this Handbook.
3. When two payments from the same income source are received the same month due to mailing cycle adjustments, count each payment only for the month it is intended. Income sources commonly affected by such mailing cycle fluctuations include general assistance, other public assistance programs, **SSI**, and **SSA** benefits.

Note: Occasionally, a regular periodic payment (*e.g.* title II, or **VA** benefits) is received in a month other than the month of normal receipt. As long as there is no intent to interrupt the regular payment schedule, consider the funds to be income in the normal month of receipt.

FSWH, § 4.3.4.1. Thus, even if the petitioner's payment, intended for January, was received on January 31, it would have been correctly included in calculating his January FS allotment.

The petitioner makes a second argument. He asserts that because he was not obligated by "reduced reporting" rules to report his increased income, the increase should be ignored in the allotment calculation. The petitioner correctly notes that the notices he receives from the Department state that he

must report within 10 days if he “has an increase of more than \$50 each month in other types of unearned income.” See Exhibit 3, p.3. This reduced reporting requirement (as opposed to a requirement that the first dollar of increase be reported) was designed to reduce burdensome reporting requirements for recipients. It also gives the recipient a break by excusing him from having to pay back small overpayments. Even if a recipient should have been given a lower allotment due to an “under \$50” income increase, the Department will not seek to collect back that modest overpayment. This reduced reporting requirement does not mean, however, that the Department will ignore any unearned income increase when it is made aware of the increase. The Department learns of “under \$50” increases through automatic database links to federal benefit programs and through required annual review forms submitted by recipients. It then adjusts the allotment calculations in the next possible month, assuming that notice of the change can be given 10 days before the first day of the affected month. *FSWH*, §§ 6.1.1., 6.1.3.2, 6.1.3.6.

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 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 \$266 shelter cost plus the \$446 heating utility standard, the petitioner’s shelter costs totaled \$712. This did exceed half of the adjusted income (\$387.50) by \$324.50, so an excess shelter cost of \$324.50 was deducted in the allotment calculation. See, Exhibit 2, January budget.

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

Gross income	930.00
Minus Earned Inc. Deduction	- 000.00
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-155.00</u>
Adjusted Income	775.00
Minus Shelter Deduction	<u>-324.50</u>
Net Income	450.50

The correct allotment for one person with net income of \$450.50 was \$58.00 in January 2015. *FS Wisconsin Handbook*, 8.1.2, p.5.

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 17th 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 17, 2015.

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