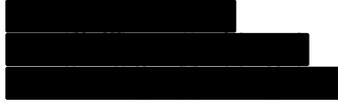




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/163619

**PRELIMINARY RECITALS**

Pursuant to a petition filed January 30, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on April 21, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's FS benefits effective February 1, 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: Julie Miller

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Waukesha County.
2. Petitioner completed a FS renewal in January, 2015. She reported gross income of \$810.60/month and rent of \$308/month. The rent expense includes gas heat and water utilities.

However, the Petitioner is unable to use gas heat for medical purposes. Therefore, the Petitioner has an additional and separate electric expense of \$66.70/month for heat.

3. Petitioner has a monthly phone expense.
4. On January 19, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would decrease to \$39/month effective February 1, 2015.
5. On January 30, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

In determining the amount of FS to be issued each month, the agency must budget all of the recipient's nonexempt income, including earned and unearned 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 for a one-person household. 7 C.F.R. §273.9(d)(1); FoodShare Handbook (FSH), § 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); FSH, § 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); FSH, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH, § 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)(6); FSH, § 4.6.7.

On April 28, 2014, a change was made to the standard utility allowance/deduction available to households receiving FS benefits. See DHS Operations Memo 14-16. Households that have received a payment from the Wisconsin Housing Energy Assistance Program (WHEAP) in the previous 12 months or pay a utility cost for heating separate from rental expense receive the full Heating Standard Utility Allowance (HSUA) of \$490/month. Households that pay two or more non-heat qualifying utility expenses (phone, water, sewer, electric, cooking fuel, or trash) receive a Limited Utility Allowance (LUA) of \$321/month. Households that pay only a non-heat electric bill receive an Electric Utility Allowance (EUA) of \$161/month. Households that pay only water, sewer, septic tank installation/maintenance or wastewater treatment bills receive a Water and Sewer Utility Allowance (WUA) of \$74/month. Households that pay only a cooking fuel expense receive a Fuel Utility Allowance (FUA) of \$37/month. Households that pay only a telephone expense, including cell phones, receive a Phone Utility Allowance (PUA) of \$30/month. Households that pay only a trash or garbage bill receive a Garbage and Trash Utility Allowance (TUA) of \$19/month.

The Petitioner asserts that she should be given a deduction because she pays a separate utility expense of \$66.70/month for heat. Gas heat is included in her rent expense but she is unable to use gas heat due to medical conditions. Therefore, she pays the extra and separate bill for electric heat.

The FS Wisconsin Standard Utility brochure indicates that a FS group is allowed the HSUA if it receives a WHEAP payment or is "required to pay a separate utility cost (that is not included in your rent) for heating your home such as electricity . . ."

The agency representative indicated that the agency would allow the HSUA if the Petitioner provided documentation of the medical need for electric heat. The Petitioner did subsequently provide such evidence. The agency re-determined the Petitioner's benefits at \$125/month. I reviewed the revised budget screen. Based on the Petitioner's testimony and evidence, I conclude that the Petitioner is entitled to \$125/month in FS benefits effective February 1, 2015.

**CONCLUSIONS OF LAW**

The Petitioner is entitled to \$125/month in FS benefits effective February 1, 2015.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency to take all administrative steps necessary to revise the Petitioner's FS allotment to \$125/month effective February 1, 2015 and issue any supplemental benefits owed to the Petitioner. These actions shall be completed within 10 days of the date of this decision.

**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 Milwaukee,  
Wisconsin, this 15th day of May, 2015

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\sDebra Bursinger  
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 May 15, 2015.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability