FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOO/165905

PRELIMINARY RECITALS

Pursuant to a petition filed May 06, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on June 09, 2015.

The issue for determination is whether the agency correctly calculated petitioner's FS effective March 1, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Rachel Petrick, Lead ESS
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Racine County.
2. On February 18, 2015 the petitioner completed an FS renewal for her household of 2. As a result of that review, the agency determined that she pays a monthly rent that includes her utilities, except that she does pay separately for a phone expense.

3. On March 3, 2015 the agency issued a notice to petitioner stating that effective March 1, 2015 her FS would be $16.

DISCUSSION

FS benefits are calculated pursuant to 7 C.F.R. §273.9. The maximum FS allotment amounts, based on household size, are listed at *FoodShare Wisconsin Handbook*, §8.1.2. The *FS Handbook* can be viewed online at http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm.

In calculating the petitioner's allotment, the agency must follow the procedure set by the federal FS regulations, which is restated in the *FS Handbook*. In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. § 273.9(b). From the gross household income, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6.1 are allowed: a standard deduction, an earned income deduction, a medical expenses deduction, a child support payment deduction, a dependent care expense deduction, and a shelter expense deduction. Some FS groups are not allowed a deduction for some expenses and some expenses are not always deducted in full.

Petitioner's concern at hearing was the decrease in her FS to $16 and that this is insufficient.

The reason her FS decreased was due to a mass change in policy regarding utility deductions. The policy in question relates to Operations Memo #14-16, available online at https://www.dhs.wisconsin.gov/dhcaa/memos/14-16amended2.pdf. As noted in the policy, this change in policy was to take place for FS renewals processed on or after April 28, 2014 as it did here. Of particular relevance here, it states, "Households that have not received WHEAP will receive the appropriate utility standard based on the utility obligation(s) incurred by the household at the food unit's current residence…The Phone Utility Allowance (PUA), if obligated to pay, or actually paying for only a telephone, including cellular phones." *Id.* Because petitioner is only paying for the phone utility, she gets the PUA, which is $30. *Id.* She was previously receiving a higher utility deduction based on the older policy, which allowed her to receive a higher FS allotment in the past.

The agency presented the budget screens to show how it determined petitioner's FS. Petitioner did not quarrel with the arithmetic. I have reviewed the information post-hearing as well and find no errors in the computations.

I remind the petitioner that if her income decreases, or has other changes to her household, she must report and verify that to the agency so her FS can be redetermined. I add, assuming petitioner feels that this is not a fair determination, that I do not have equitable powers and cannot deviate from what law and policy dictate. See Oneida County v. Converse, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993). In other words, I cannot change the outcome here because it would be fair.

CONCLUSIONS OF LAW

The agency correctly calculated petitioner's FS effective March 1, 2015.

THEREFORE, it is **ORDERED**

The petition for review herein 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 Milwaukee,
Wisconsin, this 18th day of June, 2015

\sKelly Cochrane
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 June 18, 2015.

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