



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

FOO/166045

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Department of Health Services, Northern IM Consortium in regard to FoodShare benefits (FS), a hearing was held on June 9, 2015, by telephone.

The issue for determination is whether the Department correctly determined the amount of the petitioner's FS for June 1, 2015.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

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

By: Redacted, Resolution Coordinator-Northern Consortium
Wood County Human Services - WI Rapids
220 Third Avenue South
Suite 4
Wisconsin Rapids, WI 54495

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Iron County.
2. The petitioner has an ongoing FS case as a household of two persons. Prior to June 2015, he received a \$357 FS allotment. That allotment was calculated based on the following: unearned

income of \$836.78, minus a \$155 standard deduction, minus \$265.90 in child support paid out, a \$239 rent cost, and subtraction of a \$446 heating utility standard.

3. Since at least October 2014, the petitioner has lived in a rental property in which utilities other than telephone are included in the rent price. As a result, he has not received an Energy Assistance payment since November 2013.
4. The petitioner's FS case was reviewed on April 9, 2015. At that time, a changed policy regarding the heating utility standard was applied. On April 24, 2015, the Department issued written notice to the petitioner advising that his FS allotment would be reduced to \$247, effective June 1, 2015. The only item changed in the calculation from the figures in Finding #2 above was the elimination of the \$446 heating utility standard. A \$30 telephone-only utility standard was subtracted instead.

### DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for June 2015. The petitioner's gross income type and amount is not in dispute. 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.wi.gov/fsh/](http://www.emhandbooks.wi.gov/fsh/).

In calculating the petitioner's June 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 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 s/he incurs 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 only a record of the support expense being reported to the agency 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 \$230 shelter cost (rent) plus \$30 for the Telephone-only Utility Standard, the petitioner's shelter costs totaled \$260. This exceeded half (\$207.94) of the adjusted income, so the excess of \$52.06 was deducted in the allotment calculation.

A two-person household with \$363.82 net income received a \$247 FS allotment in June 2015. *FSWH*, § 8.1.2.

The change to the petitioner's case is the recent policy requirement that he must now be actually be paying a heating bill to get the Heating Utility Standard deduction. The Department's current policy language is as follows:

#### **4.6.7.3 Standard Utility Allowances**

Effective April 28, 2014, the change in policy is to be applied at application and renewal. Simplified reporting cases with reported changes are not required to report changes in utility obligations; therefore this policy change may have no impact on the case.

FoodShare households that have received a **WHEAP** or **LIHEAP** payment in the current month or within the past 12 months will receive the HSUA. Households that have not received WHEAP or LIHEAP will receive the appropriate utility standard based on the utility obligation(s) incurred by the household as described below:

...  
*The Heating Standard Utility Allowance (HSUA), if obligated to pay, or actually paying for any heating source, including but not limited to gas, electric, wood, propane, etc.*

*(emphasis added)*

*FSWH, 4.6.7.3.*

The above language is not in conflict with the federal regulation:

(d) *Income deductions.* Deductions shall be allowed only for the following household expenses:

...  
(6) *Shelter costs*—(i) *Homeless shelter deduction.* ...  
(ii) *Excess shelter deduction.* Monthly shelter expenses in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1) through (d)(5) of this section have been allowed. ...

(A) Continuing charges for the shelter occupied by the household, including rent, mortgage, condo and association fees...

(B) ...

(C) The cost of fuel for heating; cooling; electricity or fuel used for purposes other than heating or cooling; water; sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; all service fees required to provide service for one telephone, ...

(iii) *Standard utility allowances.* (A) With FNS approval, a State agency may develop the following standard utility allowances (standards) to be used in place of actual costs in determining a household's excess shelter deduction: an individual standard for each type of utility expense; a standard utility allowance for all utilities that includes heating or cooling costs (HCSUA); and, a limited utility allowance (LUA) that includes electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. ...

(C) A standard with a heating or cooling component must be made *available to households that incur heating or cooling expenses separately from their rent or mortgage ...*

*[emphasis added]*

7 C.F.R. 273.9(d)(6). Based on the foregoing, I conclude that the agency correctly reduced the petitioner's allotment for June 2015. After listening to the agency's explanation, the petitioner indicated that he no longer disputed the June reduction.

**CONCLUSIONS OF LAW**

1. The Department correctly decreased the petitioner's June 2015 FS allotment by eliminating his heating utility standard deduction.

**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 10th day of June, 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 June 10, 2015.

Wood County Human Services - WI Rapids  
Division of Health Care Access and Accountability