



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/166763

PRELIMINARY RECITALS

Pursuant to a petition filed June 19, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Douglas County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on July 23, 2015, at Superior, Wisconsin.

The issue for determination is whether the county agency correctly determined the petitioner's FoodShare allotment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Tom Ostrander

Douglas County Department of Human Services
1316 North 14Th Street
Suite 400
Superior, WI 54880

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Douglas County.

2. The county agency notified the petitioner on March 13, 2015, that his FoodShare allotment would be \$72 per month in March 2015 and \$113 as of April 2015. He appealed this decision on June 19, 2015.
3. The petitioner receives \$816.78 in SSI each month. He has no earned income.
4. The petitioner lives alone.
5. The petitioner pays \$650 for rent each month.
6. The petitioner pays \$50 in child support each month.
7. The petitioner pays for his telephone.

DISCUSSION

The size of a FoodShare allotment depends upon household size and net income. Net income is determined after subtracting from gross income those deductions—and only those deductions—found in 7 CFR § 273.9(d). The petitioner lives alone. His gross income is \$816.78, all from SSI, and thus is considered unearned. He is entitled to the \$155 standard deduction allowed for households with up to three members. *FoodShare Wisconsin Handbook*, § 4.6.2 and 8.1.3; 7 CFR § 273.9(d)(1). He is also entitled to a \$50 deduction because he pays that much in child support each month. *FoodShare Wisconsin Handbook*, § 4.6.5.; 7 CFR § 273.9(d)(5).

The last deduction he is entitled to is the shelter deduction. This deduction, unlike others, is based upon a fairly complex formula rather than actual expenses. It equals the amount that housing costs exceed 50% of the net income remaining after all other deductions are subtracted from gross income. His monthly shelter costs include \$650 in rent and his telephone service. Recipients paying for telephone service receive a standard allowance of \$30. Because there is a standard allowance, actual telephone costs are not considered. The agency did not include this in its calculations, apparently because he did not include it in his application. However, because I cannot tell from the documentation whether this information was actually omitted, I will allow it. This brings his shelter costs to \$680. *FoodShare Wisconsin Handbook*, § 4.6.7; 7 C.F.R. § 273.9(d)(6)(ii); *FoodShare Wisconsin Handbook*, § 8.1.3. His income after subtracting his \$155 shelter and \$50 child support deductions is \$611.78. Half of this is \$305.89. The difference between this and his \$680 allowable shelter costs is \$374.11. This is his shelter deduction.

Subtracting his \$374 shelter deduction, his \$155 standard deduction, and his \$50 child support deduction from his \$816.78 gross income leaves him with \$237.87 in net income. The FoodShare allotment for a one-person household with this net income is \$122. *FoodShare Wisconsin Handbook*, § 8.1.2. Because this is more than the agency allowed, I will remand this to them to increase his allotment to \$122 retroactive to April 1, 2015.

I note that the state previously determined the shelter deduction in a way more favorable to him. Most Wisconsin FoodShare recipients had been receiving the heat standard allowance, which at \$446 per month is much higher than the \$30 telephone allowance. But Wisconsin no longer gives the heat standard utility allowance to those whose utilities are included in their rent, unless they receive energy assistance. *The Agriculture Act of 2014*, Title IV, § 4006; 7 C.F.R. § 273.9(d)(6)(ii); 7 CFR § 273.9(d)(3), referring to 7 CFR § 271.2. Wisconsin had been granting the utility allowance to those whose utilities were included in their rent by allowing them a \$1 annual energy assistance payment, but the current farm bill requires households whose heating costs are included in their rent to receive at least \$20 a year in heating assistance to qualify for the utility allowance. Most states that had provided \$1 a month in energy assistance raised this amount \$20, but Wisconsin did not. If it had, the petitioner would have received the maximum FoodShare allotment, as he had previously.

I also note that I have not reviewed the petitioner's March 2015 benefits because his appeal was filed more than 90 days after both the date that portion of his benefits took effect and the date the agency notified him of its decision. *See Wis. Admin. Code, § HA 3.05(3)(a)*. The decision affected benefits on March 1, 2015, the agency notified him of its decision on March 13, 2015, and he appealed on June 19, 2015, which is 98 days later. I considered his challenge of the portion of the decision pertaining to his April benefits because he filed his appeal within 90 days of when that decision took effect.

CONCLUSIONS OF LAW

1. The petitioner cannot challenge the agency's decision concerning his March 2015 FoodShare benefits because he did not file his appeal within 90 days.
2. The petitioner is entitled to \$122 in FoodShare each month from April 2015 forward.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it increase the petitioner's FoodShare allotment to \$122 per month, retroactive to April 1, 2015. The agency is also ordered within 10 days to issue a supplemental allotment for any month since then that the petitioner received less than \$122 in FoodShare.

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 29th day of July, 2015

\sMichael D. O'Brien
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 29, 2015.

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