



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/167278

PRELIMINARY RECITALS

Pursuant to a petition filed July 15, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Ozaukee County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 01, 2015, at Port Washington, Wisconsin.

The issue for determination is whether Petitioner’s FoodShare allotment has been correctly calculated.

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: Karen Niemuth

Ozaukee County Department of Social Services  
121 W. Main Street  
PO Box 994  
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

David D. Fleming  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Ozaukee County.
2. Petitioner filed this appeal to contest a reduction in the amount of her FoodShare benefits; the allotment went from \$257.00 for the months of December 2014 through July 2015 to \$16.00 as of August 2015. An issuance history shows that the allotment increased to \$81.00 in September 2015 and then to \$96.00 in October 2015. See Ex # 11.
3. Petitioner’s case was updated in May/June 2015 when Petitioner filed an application for child care benefits. That application triggered a request for verification of earnings.

4. Petitioner submitted 2 paystubs from May 2015 that showed a gross income of \$734.28 on one check and \$766.06 on the other. While Petitioner had no commissions shown on either of those checks, she had earned \$3154.00 in commissions year to date. Her year to date income through May 2015 was \$12376.25. This is a gross of \$2476.00 per month though the agency used a lesser amount of \$2349.86 and it is the agency determined gross that is used herein.
5. Petitioner's FoodShare household size is 2.
6. The agency used the following expenses in determining Petitioner's FoodShare allotment: a standard deduction of \$155.00, a dependent care deduction of \$150.50, an earned income deduction of 20% or \$469.97. Petitioner pays rent of \$250.00 and has utility allowance of \$446.00 but this is less than half of her adjusted income after the other expenses.

### **DISCUSSION**

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.* If income fluctuates, an averaged is used to determine income over the remainder of the certification period. *FSH, §1.2.4.2.* A certification period is typically 12 months. *FSH, §2.2.1.*

The gross income limit for a household of 2 is \$2656. *FSH, §8.1.1.1.* Petitioner's gross income is less than this.

If a household passes the gross income test, the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$155 per month for a household of 1-3 persons, *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction – the utility expense requires that a household have an actual utility obligation and is a standard deduction based on that obligation (\$30 where it is phone only); the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).* There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.3 and 8.1.3.*

While Petitioner does not believe that this FoodShare allotment is correct or sufficient; in reviewing the calculation of Petitioner's FoodShare allotment, I find no errors.

The current issuance history does show that there have been changes to the allotment; Petitioner should be aware to report changes in income and expenses and that a change reported in one month can affect benefits in the next month. *FSH, §6.1.3.3.*

### **CONCLUSIONS OF LAW**

That the available evidence indicates that the agency correctly determined Petitioner's FoodShare allotment.

**THEREFORE, it is**

**ORDERED**

That this appeal 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 12th day of October, 2015

---

\sDavid D. Fleming  
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 October 12, 2015.

Ozaukee County Department of Social Services  
Division of Health Care Access and Accountability