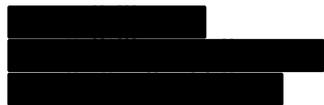




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/167506

**PRELIMINARY RECITALS**

Pursuant to a petition filed July 24, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 12, 2015, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner’s appeal is timely and whether an error has been made in the calculation of his FoodShare allotment.

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: Belinda Brown

Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest a reduction in his FoodShare that occurred in late 2014 when his FoodShare allotment was reduced from \$139.00 to \$15.00. It increased to \$18.00 for the months of October, November and December 2014. It decreased to \$16.00 effective January 1, 2015 and has remained at that level to the present. Petitioner was sent a Notice of Decision dated December 8,

2014 that informed him of the January 1, 2015 allotment of \$16.00. It contains appeal instructions and notes an appeal deadline of April 2, 2015. It was sent to Petitioner at the above address.

3. Petitioner's FoodShare case was reviewed in the late summer of 2014 and Petitioner reported that he does not pay for utilities.
4. Petitioner's FoodShare household consists of one person.
5. The agency determined that Petitioner's gross FoodShare household income to be \$792.00 as of January 1, 2015. The income source is Social Security retirements benefits and the benefit had been \$779.00 in 2014.
6. The FoodShare allotment calculation formula effective April 1, 2015 for Petitioner included the standard deduction of \$155.00. Petitioner pays rent of \$350.00, does not pay for any utilities so has a shelter expense deduction of \$31.50. See Exhibit # 8, page 4.

### DISCUSSION

The Division of Hearings and Appeals can only make a decision on the merits of a matter if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FoodShare must be filed within 90 days of the date of that action. *7 CFR, §273.15(g)*. A negative action can be the denial of an application or the reduction or termination of an ongoing case. Here Petitioner's appeal was well over 3 months after the appeal deadline so is not timely. While errors in the allotment determination can be corrected, none is alleged here. *FoodShare Wisconsin Handbook (FSH), §7.4.1.1*. Nonetheless, for Petitioner's benefit I will describe the FoodShare allotment determination formula.

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*.

The gross income limit for a household of one is \$1946. *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 (\$446 where a person pays for heat); 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*.

The problem here for Petitioner is that there has been a change in the standard utility allowance. Instead of a standard deduction of \$446.00 it has changed so is based on actual utility obligations. Petitioner does not find the \$16.00 allotment to be sufficient. Nonetheless, even if Petitioner's appeal was timely I would not change the allotment as, given Petitioner's income and deductions; the correct monthly FoodShare allotment is \$16.00. *FSH, §8.1.2*.

As a final note, a reported change in income or expenses can affect the FoodShare allotment in the month following the report of the change so if any of Petitioner's financial circumstances change (as an example – additional medical expenses) he should report the change as soon as possible. *FSH, §6.1.3.3.*

**CONCLUSIONS OF LAW**

That Petitioner's appeal is not timely and no error is noted in the agency calculation of his FoodShare benefits.

**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 16th day of September, 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 September 16, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability