



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed August 28, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 30, 2015, at Madison, Wisconsin.

The issue for determination is whether the Department correctly reduced the petitioner's FS allotment effective September 1, 2015.

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: [REDACTED], ES Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. The petitioner has an ongoing FS case as a household of one person. In August 2015, the agency received data from the Social Security Administration advising that the petitioner's federal SSI

income was increasing from \$624.29 to \$700.50 effective September 1, 2015. This meant that the petitioner's total gross income for September would be \$969.57 (SSI, \$83.78 State SSI, \$95.99 SSI-E, \$185.29 earnings calculated per FS regulation).

3. On August 19, 2015, the Department issued written notice to the petitioner advising that her FS would be reduced from \$190 to \$120 effective September 1, 2015. The basis for reduction was increased unearned income (the SSI). The petitioner timely appealed, and aid was ordered continued pending appeal.
4. The petitioner has had a rent expense of \$475.00 monthly from at least August 2015 forward. Prior to October 2015, the Department was crediting her with a heating utility cost in the FS allotment calculation. She does not pay out child support, has not documented excess medical expenses for which she is liable, and does not incur a dependent care expense to go to work.
5. On August 24, 2015, the petitioner clarified for the Department that her heating cost was included in her rent. The only utility cost that she is therefore allowed to deduct in the allotment calculation is a \$30 standard telephone expense. As a result, on August 31, 2015, the Department issued written notice to the petitioner advising that her FS would be decreased to \$16 effective October 1, 2015.
6. The petitioner's paystubs show gross earnings for September 2015 totaling \$311.96. *See*, Exhibit 4. Therefore, she did not receive less in earnings than the \$185.29 budgeted by the Department in the FS calculation.

DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for September 2015, onward. The gross income was based on paystubs from the petitioner. There is no dispute as to the agency's arithmetic in averaging those paystubs. 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.wisconsin.gov/fsh/. For earned income that is received biweekly, the agency is directed to develop a biweekly average, and then multiply that figure by 2.15 to account for three-paycheck months. For weekly income, the multiplier is 4.3. 7 C.F.R. §273.10(c)(2).

In calculating the petitioner's September and October allotments, 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 currently 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 given here. A Dependent Care Deduction is also taken if the petitioner incurred 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 no record of the latter three expenses 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 \$475 shelter cost plus the \$30 telephone utility standard, the petitioner's shelter costs totaled \$505. This did exceed half of the adjusted income (\$388.76), so the *excess* shelter cost of \$116.24 was deducted in the allotment calculation.

Thus, the October 2015 allotment calculation correctly looked like this:

Gross income	969.57
Minus Earned Inc. Deduction	- 37.05
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-155.00</u>
Adjusted Income	777.52
Minus Shelter Deduction	<u>-116.24</u>
Net Income	661.28

The correct allotment for one person with net income of \$661.28 was \$16 in September and October 2015. *FS Wisconsin Handbook*, 8.1.2, p.6.

The petitioner also produced a letter from the Social Security Administration, announcing a lowering of her SSI benefit effective November 1, 2015. The November action is beyond the scope of this appeal. If the Department does not reduce the petitioner's income for the November calculation, the petitioner may file another appeal.

CONCLUSIONS OF LAW

1. The Department correctly determined the petitioner's FS allotments for September and October 2015.

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 27th day of October, 2015

\sNancy J. Gagnon
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 October 28, 2015.

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