



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/169315

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 07, 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 November 03, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly terminated the petitioner’s FoodShare (FS) benefits effective October 1, 2015.

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

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # ) is a resident of Milwaukee County. There are three people in the petitioner’s household. The petitioner is an elderly, blind, or disabled household.

2. On September 18, 2015 the agency sent the petitioner a notice stating that his FoodShare (FS) benefits were ending effective October 1, 2015 because he had not completed his six month report form.
3. On September 30, 2015 the agency sent the petitioner a notice stating that he had applied for FS benefits on September 29, 2015 and his application was denied because his household income was over the program limit.
4. The petitioner's gross monthly household income is \$2,694.80 consisting of \$856 from social security for himself, \$1,051 in social security for his wife, and \$578 in social security for his daughter.
5. The petitioner owns his home. His monthly mortgage is \$739. His monthly property taxes are \$474.50. When he applied for FS benefits he reported and provided verification that his monthly homeowners insurance was \$130. The petitioner is responsible for all his utilities.
6. The petitioner and wife each pay \$104.90 in monthly Medicare Part B premiums. The petitioner did not provide verification of additional medical expenses until the date of the hearing. At the hearing the petitioner provided additional medical bills. These bills had not been submitted to the agency prior to the hearing.
7. On October 9, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing. The form asked for benefits not to be continued pending the outcome of the Fair Hearing.

### DISCUSSION

In calculating the petitioner's FS 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 the county to start with gross income, deducting a limited number of identified deductions from that income to calculate the adjusted 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 household size of 1 is \$155, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

I reviewed the agency's calculations in this case, and the calculations are correct. The agency correctly determined the petitioner's monthly gross income, standard deduction, excess shelter deduction, and excess medical deduction.

The petitioner agrees with the agency's calculation of his monthly gross income. He further agrees with the mortgage and property tax amount. He testified that he pays more in monthly insurance than what was budgeted, however, he did not provide verification of this insurance amount until the hearing. He also verified additional medical expenses at the hearing. This verification was not previously provided to the agency. The petitioner further agrees that he is responsible for his utilities. He implicitly argued that his utility costs are greater than the maximum utility standard used to calculate his FS benefits. The agency's calculations are correct based upon the reported and verified information on the petitioner's September 29, 2015 application for FS benefits.

With respect to the petitioner's home owner's insurance and utility costs used to calculation the petitioner's excess shelter deduction. Verification is only required for shelter expenses if the amount seems questionable. The agency had previously budgeted \$130 for the petitioner's homeowner's insurance. The petitioner states that he reported a homeowner's insurance amount of \$176.85. This seems unusually high. The agency has the discretion to request verification on this item. There was a

change and the amount does seem high, thus, it would seem reasonable to request verification. Verification was not provided until the day of the hearing. I further note that even if the agency had budgeted the entire \$176.85, the petitioner would have been eligible for \$2 in monthly FS benefits. The agency properly allowed for the maximum utility deduction. The maximum utility deduction is \$458, not the utility obligations a person pays. *FS Handbook* § 8.1.3.

With respect to the petitioner's medical expenses, I refer the petitioner to *FS Wisconsin Handbook* 1.2.4.8., which states that "the amount of medical expenses claimed by an elderly, blind, or disabled individual must be verified at application in order for the expense to be used in the FoodShare benefit calculation." The petitioner argued that he verbally reported the medical expenses at the time of the application, but did not provide verification until the hearing. He did not have the medical bills when he applied, and although he received the bills two weeks prior to the hearing, he opted to bring the bills with him to the hearing. My review of this case is limited to whether the agency correctly denied the petitioner's September 29, 2015 application for FS benefits. Based upon the information that he provided on September 29, 2015, their denial and termination of the petitioner's FS benefits effective October 1, 2015 is correct.

The petitioner also argued that he should receive a dollar for dollar deduction for his shelter expenses. He reasons that the agency calculates his shelter expenses to be \$1,801.75. This includes his mortgage, property taxes, reported and verified homeowner's insurance, and the standard heating and utility allowance. He then argues that the \$1,801.75 should be subtracted from his gross income. The petitioner stated that this is what he read in the FS handbook that is sent to all FS households. As stated at the hearing the petitioner is incorrect. I refer the petitioner to *FS Handbook* § 4.6.7.1., which states, "deduct shelter and utility obligation amounts (not actual amount paid) which exceed 50% of the food unit's net income after all other deductions are made." See also 7 C.F.R. §273.9(d)(6)(ii), which explains the excess shelter deduction. As stated at the hearing the only difference between an elderly, blind, or disabled (EBD) household and a non-EBD household with respect to the excess shelter deduction is that there is no shelter cap, not that an EBD household would receive a deduction for the actual amount of shelter expenses paid. *FS Handbook* § 4.6.7.1.

The petitioner was upset that his benefits were not continued pending the outcome of his appeal. The fair hearing request form indicated that he did not wish his benefits to continue. The petitioner states that this was intentional on the agency's part, and that essentially the agency is out to get him. He states that he requested his benefits be continued, but the agency intentionally checked the box no, so that he would not get his benefits. I do not believe that the agency did that. Rather, I believe that the petitioner is confused about his FS benefits and the appeal process. Regardless, even if it was intentional on the agency's part, the agency did the petitioner a favor. The petitioner's appeal is resulting in a dismissal. The continuation of benefits would have caused an overpayment, which the petitioner would have been responsible to repay. At the hearing, I stated I would look into continuing the petitioner's benefits until my decision. Instead of continuing the benefits, and causing an overpayment for the petitioner, I am opting to issue my decision one day after the hearing.

If the petitioner believes that he is eligible for FS benefits given the additional expenses reported at the hearing, he may reapply for FS benefits.

### **CONCLUSIONS OF LAW**

The agency correctly terminated the petitioner's FoodShare (FS) benefits effective October 1, 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

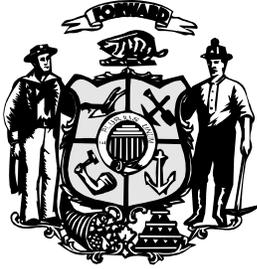
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 Milwaukee,  
Wisconsin, this 5th day of November, 2015

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\sCorinne Balter  
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 November 5, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability