



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 26, 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 November 25, 2015, at Madison, Wisconsin.

The issue for determination is whether the Department correctly reduced the petitioner's FS 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. Prior to September 2015, the petitioner headed an ongoing FS case for a household of two persons (self and husband), with her allotment for August 2015 being \$291.

3. On August 17, 2015, the Department issued written notice to the petitioner advising that her FS would be reduced from \$291 to \$16 effective September 1, 2015. The basis for reduction was increased income. The petitioner timely appealed.
4. The petitioner has a shelter expense of \$725, plus utilities. She does not pay out child support, and does not incur a dependent care expense to go to work.
5. By August 2015, the petitioner's husband received monthly unearned income of \$753. The petitioner had earned income of \$1,887.53. The petitioner moved and signed a new lease in June 2015, which did not bear her husband's name. She did not report her husband as being out of her household until September 11, 2015.

### DISCUSSION

The petitioner questions the correctness of the calculation of the FS allotment amount for September 2015, onward. The gross income was based on the husband's verified unearned income, and the petitioner's verified earnings from [REDACTED]. There is no dispute as to the verified amounts for August and September 2015, or the agency's arithmetic in calculating gross income. 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/](http://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 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 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 \$725 shelter cost plus the \$446 heating utility standard, the petitioner's shelter costs totaled \$1,171. This did exceed half of the adjusted income (\$774.01), so the excess shelter cost of \$396.99 was deducted in the allotment calculation.

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

Gross income	1940.53
Minus Earned Inc. Deduction	- 237.50
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	<u>-155.00</u>
Adjusted Income	1548.03
Minus Shelter Deduction	<u>-396.99</u> (\$490 was the maximum in Sept.)
Net Income	1151.04

The correct allotment for two persons with net income of \$1,151.04 was \$16 in September 2015. *FS Wisconsin Handbook*, 8.1.2, p.11.

The petitioner argues that her husband was no longer living with her as of June 2015. Despite having numerous contacts with the Department in the ensuing months, the petitioner did not tell the agency that the husband was out of the house until September 11, 2015. The household composition change is made as soon as possible after the recipient tells the agency that a household member has left. Thus, the agency did not err in including the husband in the household for September. If the agency had reduced the household size to one for October, the allotment would still have been at \$16 due to higher earned income. The Department did reduce the FS household size to one person beginning with the November 2015 allotment.

### **CONCLUSIONS OF LAW**

1. The Department correctly determined the petitioner's FS allotment for September 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 16th day of December, 2015

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\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 December 16, 2015.

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