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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FOO - 175492

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on July 11, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Dept. of Social Services regarding FoodShare benefits (FS), a hearing was held on October 11, 2016, by telephone.

The issue for determination is whether the county agency correctly calculated a reduction in petitioner's FS benefits.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: Connie Mageland and Melissa Genz  
Rock County Dept. of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Kristin P. Fredrick  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 64 year old resident of Rock County who is categorically eligible for FoodShare benefits under the Elderly, Blind or Disabled (EBD) classification.
2. Prior to June 2016, the petitioner received social security income in the monthly amount of \$751.00, which resulted in a FS allotment of \$153 per month.
3. In May 2016, the petitioner began receiving additional monthly income in the amount of \$241.00 through a share of her ex-husband's social security retirement income.
4. Based upon the additional income, the petitioner's FS allotment was reduced to \$45.00 per month effective July, 2016.
5. The county agency calculated the petitioner's FS allotment utilizing a shelter/utility deduction in the amount of \$341.49.
6. The petitioner testified that she incurs utility expenses totaling \$773.99, which is in excess of the amount calculated by the county agency in determining the appropriate shelter expense deduction.

### DISCUSSION

The county agency reduced the petitioner's FoodShare ("FS") allotment to \$45 as of July 2016, after her monthly income increased as a result of receiving an additional social security payment in the amount of \$241 based upon her receipt of a share of her ex-husband's social security benefits. The petitioner contends the reduction in FS is insufficient for her to live upon. FoodShare allotments are calculated based upon the language of FoodShare laws and regulations and not upon equitable arguments or a sense of fairness.

The amount of a FS allotment depends upon household size and net income. In determining the amount of FS to be issued each month, the county agency budgets all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). Net income is determined after subtracting applicable deductions set forth in 7 CFR § 273.9(d) from gross income. The gross monthly income of the petitioner, who lives alone, is \$992.00, all unearned.

As a household of one, the petitioner is entitled to the \$155 standard deduction. *FoodShare Wisconsin Handbook*, § 4.6.2 and 8.1.3; 7 CFR § 273.9(d)(1). She is not entitled to the earned income deduction because she is not working. *See* 7 CFR § 273.9(d)(2). The petitioner acknowledged that she did not incur any medical expenses to support an excess medical expense deduction nor did she claim any dependent care expenses. The agency determined that the petitioner was entitled to a shelter expense deduction, as her total shelter and utility expenses are in excess of 50% of the net income remaining after other deductions. *FS Handbook*, § 4.6.7; 7 C.F.R. § 273.9(d)(6)(ii). For the petitioner, this is any amount over \$418.50 (i.e. one-half of the \$837.00 remaining after subtracting the \$155 standard deduction from her \$992.00 in gross income). Because the petitioner is categorically eligible for benefits under the elderly, blind or disabled standard, there is no maximum cap on the amount of the shelter deduction that can be taken. *FS Handbook*, §4.6.7.1.

Based upon the county agency's calculations, the petitioner received a shelter deduction in the amount of \$341.49. The agency calculated the petitioner's shelter deduction based upon total monthly shelter expenses of \$759.99 broken down as follows: \$250.99 per month in taxes, \$51.00 per month in insurance costs and the maximum heating standard utility allowance of \$458 (petitioner receives energy assistance and is therefore entitled to the maximum heating standard utility allowance. *FS Handbook*, §8.1.3). The agency subtracted \$418.50 from \$759.99 to arrive at the shelter deduction of \$341.49. Subtracting the

\$341.49 shelter deduction from petitioner's adjusted income of \$837.00 resulted in a net adjusted income of \$495.51. A one-person household with this net income would be entitled to a \$45 monthly FS allotment. *See FS Handbook*, Appendix § 8.1.2.

Based upon the evidence and testimony provided, the only thing that the county agency appears to have omitted in their calculation of the shelter and utility expense deduction is the petitioner's phone utility allowance. The petitioner testified that she pays \$472 in monthly utility bills, which includes both phone and heat expenses. Therefore, her total shelter/utility expenses per month would be \$773.99 (or \$14.00 more than what was allowed under the county agency's calculations). Subtracting the \$418.50 from \$773.99 amounts to \$355.49 in shelter deductions and leads to a net adjusted income of \$481.51 (\$837 minus \$355.49). Under a one-person household with a net monthly income of between \$481-\$483 results in a FS allotment of \$49.00 per month instead of the \$45 determined by the county agency. *See FS Handbook*, Appendix §8.1.2.

The petitioner expressed concern that she was unable to live on the amount of income she receives after payment of all of her monthly and yearly expenses. Unfortunately, the Division of Hearings & Appeals lacks the authority to render a decision on equitable arguments or to order a higher FS amount than what is allowed by FS calculation rules; rather the Division is limited to reviewing FS calculations based upon existing statutes, federal regulations, administrative code provisions and pursuant to FS policies and procedures found in the FS Handbook. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). However, should the petitioner's shelter and utility expenses exceed what has already been presented, then she should submit evidence of same to the county agency so that the FS allotment can be recalculated.

### **CONCLUSIONS OF LAW**

1. The agency incorrectly determined the amount of petitioner's FS allotment.
2. The petitioner is entitled to \$49.00 in monthly FS allotment.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it increase the petitioner's FoodShare allotment to \$49 per month retroactive to July 1, 2016.

### **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, **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 17th day of October, 2016

\s \_\_\_\_\_  
Kristin P. Fredrick  
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 17, 2016.

Rock Cty. Dept. of Social Services  
Division of Health Care Access and Accountability