



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/170535

PRELIMINARY RECITALS

Pursuant to a petition filed November 30, 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 February 10, 2016, at Madison, Wisconsin.

The issue for determination is whether the agency erred in its termination of petitioner’s FS benefits effective 12/1/15.

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]
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner received FS benefits as a one-person household.
3. Petitioner was employed at [REDACTED] in all or most of 2015.

4. Petitioner's gross earned income from [REDACTED] from July 2015 to December 2015 exceeded \$1,962 monthly. According to state wage records, the earned income in the 3rd quarter of 2015 was 7,150.32 and in the 4th quarter the earned income was \$8,436.83.
5. Petitioner also received unearned monthly income during those months in the amount of \$133.17.
6. The agency had budgeted a reported earned income of only \$1,703.23.
7. The agency learned of this discrepancy and issued a notice on 11/18/15 terminating FS effective 12/1/15.
8. Petitioner appealed.

DISCUSSION

FoodShare benefits and eligibility depend upon income and the size of the household. Households whose gross income exceeds 200% of the federal poverty level are not considered categorically eligible for benefits. *FoodShare Wisconsin Handbook*, § 4.2.1.1. This means that it cannot receive benefits regardless of what its net income is. For a one-person household, the size of the petitioner's, 200% of the federal poverty level is \$1,962 per month. *FoodShare Wisconsin Handbook*, § 8.1.1. Gross household income includes all income from any source unless FoodShare regulations specifically exclude it. 7 CFR § 273.9(b). The state wage records of gross wages paid to petitioner indicate that petitioner exceeded this gross income limit in the 4th quarter of 2014, and the 2nd quarter of 2015, and the 3rd quarter of 2015, and the 4th quarter of 2015. Indeed, under the state wage data, petitioner's monthly income from July 2015 to December 2015 averaged \$2,597.86. This does not even count the unearned income paid to the petitioner. Petitioner exceeded the gross income limit for the FS program in each of the final 6 months of the year. He was not eligible for FS in any of those months and he did not provide any evidence to suggest that the agency has erred.

Petitioner only argument at hearing was that it is not fair to count his gross income and that the program should consider only his net income after taxes and other deductions or expenses. Petitioner argued that he cannot buy food or other necessities with money that he does not see or take home. While this assertion is true, the FS program rules as set forth by the federal program guidance and the state which administers the program is clear that it is to count gross wages and salaries. According to the *FS Handbook*:

4.2.1.1 Categorical Eligibility Introduction

Most FoodShare groups are considered categorically eligible if their gross income is at or below 200% FPL....

The FS group is not categorically eligible if any member of its food unit loses FS eligibility because s/he:

1. ***Total gross income is above 200% (8.1.4),***
2. ***Was disqualified for an IPV (3.14.1) or,***
3. ***Was disqualified due to a drug felony sanction (3.19.1).***

* * *

If the household's gross income goes over 200% of FPL, the case will close. A negative notice will be sent with reason code 013: Income reported exceeds the program eligibility standard.

FS Wisconsin Handbook at § 4.2.1.1 (emphasis added). The determination of eligibility begins with counted income gross earned income and unearned income except for some limited exceptions (*see FS Wisconsin Handbook* at § 4.3.2.2 and 4.3.4.3). None of those exceptions (disregards) apply here.

During the hearing, petitioner expressed his frustration that he was being accused or some wrong or that this action would result in some finding of culpability or guilt. That is not the point of the agency's action. The only action thus far is one by the agency to terminate FS because the agency realized that petitioner's current income places him outside the bounds of eligibility. In a future action, the agency may indeed seek to find petitioner liable for an overissuance of benefits due to client error, or liable for an intentional program violation. Those would be separate actions and separate appeal rights would attach. This action relates only to the termination of FS and there is no finding of culpability needed or made.

CONCLUSIONS OF LAW

THEREFORE, it is

ORDERED

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 12th day of February, 2016

\sJohn P. Tedesco
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 12, 2016.

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