FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

ENE/170837

PRELIMINARY RECITALS

Pursuant to a petition filed December 14, 2015, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Waukesha County Health and Human Services in regard to Energy Assistance, a hearing was held on February 09, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly denied the petitioner's application for energy assistance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703
By: [redacted], Energy Services Worker
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:
Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Waukesha County. She is a household size of three.
2. On September 21, 2015 the petitioner applied for energy assistance.
3. The petitioner has three jobs. She is a substitute teacher for [redacted]. According to her W-2 from 2014 she earned $24,021.94 that year. The petitioner did not provide

a W-2 from 2015. When asked about providing her 2015 W-2 the petitioner stated that she believed she earned a bit less in 2015, but that she would not provide it as she did not believe it was a requirement. The petitioner did not make have any income from [redacted] in June, July, and August 2015. The petitioner works part-time at [redacted]. In June, July, and August 2015 the petitioner earned $1,597.23 from [redacted]. The petitioner also works for [redacted]. In June, July, and August 2015 the petitioner earned $6,135.83 from that job.

4. The petitioner's total countable household gross income in the three months prior to her application was $13,738.55.

5. On November 19, 2015 the agency sent the petitioner a denial letter.

6. On December 14, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

EA is mandated by Wis. Stat. §16.385. The Department of Administration administers the program. §16.385(2)(a). The Department does so by publishing the Wisconsin Energy Assistance Program Operations Manual. The manual must follow the mandate of the statute, but it is up to the Department to specify policies where the statute is silent. Energy assistance is a one-time payment during the heating season. See http://homeenergyplus.wi.gov/category.asp?linkcatid=239&linkid=118&locid=25.

Income eligibility is based on the household members' gross income in the three months prior to application. Manual, p 3.15. The three-month income limit for a three-person household is $10,339. See http://homeenergyplus.wi.gov/category.asp?linkcatid=239&linkid=118&locid=25 on the internet for all EA income limits. The website equates this three month income to a yearly income of $41,335. Id.

When counting income the manual directs the agency to use a three month test period with the exception of interest, dividends, tribal per capita payments, seasonal work, and self-generated income, for which the agency is directed to use a 12 month test period. Wisconsin Energy Assistance Program Operations Manual, §2.3.2.

In 2014 the petitioner earned $24,021.94 as a substitute teacher for [redacted] ([redacted]). I cannot determine the petitioner's 2015 income because she refused to provide those W-2s. She stated that those W-2s were not required. The petitioner argues that this [redacted] income is not seasonal. Because it is not seasonal, she believes that the agency should only look at her gross income in June, July, and August 2015. When the agency includes the petitioner's [redacted] income with her other two income sources, her three month gross income is $13,738.55. This is over the program limit. If the agency were not to average the petitioner's [redacted] income, she would be under the program limit.

The agency correctly looked at a 12 month test period when examining the petitioner's [redacted] income as a substitute teacher. Although there are a few year round [redacted] schools, the majority of schools are closed in the summer. Thus, she would be doing significantly less teaching in the summer months. Teachers are the perfect example of a seasonal employee. Most children do not attend school in the summer. A few do. There are a few year round schools; however, this is an exception. It is not commonplace as the petitioner argues.

The petitioner is also not credible. I am disappointed that this petitioner as a teaching professional would ask an agency to disregard much of her yearly income. She creates a technical, un-convincing, and incredible argument that this income should not count when determining her income eligibility for energy assistance. These programs are designed with income guidelines to help lower income individuals. Ignoring the majority of the petitioner's yearly income goes against every policy rationale for this program. If the petitioner no longer worked for [redacted], and could show that she did not substitute teach for them at the

beginning of the school year, then this case would be different. The petitioner though admitted that she had not quit her [redacted] job, and that she continues to teach for [redacted]. For that reason, her [redacted] income must be averaged over 12 months when determining income eligibility for energy assistance.

CONCLUSIONS OF LAW

The agency correctly denied the petitioner's application for energy assistance.

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 Administration, 101 East Wilson Street, 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 29th day of March, 2016

\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 March 29, 2016.

Waukesha County Health and Human Services
DOA - Energy Assistance