



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/143594

PRELIMINARY RECITALS

Pursuant to a petition filed August 30, 2012, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Brown County Human Services to discontinue FoodShare benefits (FS), a hearing was held on September 25, 2012, by telephone.

The issue for determination is whether the agency correctly determined petitioner's self-employment income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Katie Budzig
Brown County Human Services
111 N. Jefferson Street
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner has received FS since 2010 as a one-person household. FS were based upon income from a job at the [REDACTED]. In 2012 the agency discovered that petitioner actually is the owner of the [REDACTED] which is held as a Subchapter S corporation. The agency requested copies of his business tax returns.

3. The agency took the self-employment income from the 2011 return, added back in depreciation, and divided the total by twelve. The agency added that amount to petitioner’s wages (which were shown as a deduction on the tax return), and determined that monthly income was \$2,882.92.
4. By a notice dated August 13, 2012, the agency informed petitioner that FS would end September 1, 2012 because income is over the limit. Benefits have continued pending this decision.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient’s nonexempt income. 7 C.F.R. §273.9(b). The gross income limit for a household of one is \$1,816; the net income limit is \$908. FS Handbook, Appendix 8.1.1 and 8.1.4.

Treatment of self-employment income is described at 7 C.F.R. §273.11(a). Such income is annualized over a 12-month period, unless the income is intended to meet the household’s needs over a shorter period. §273.11(a)(1)(i) and (iii). To determine monthly income, the agency must take yearly income, add back in depreciation, net loss carryovers, and personal expenses, and then divide by twelve. §273.11(a)(2) and (4). A Subchapter S corporation is considered to be self-employment. FS Handbook, App. 4.3.3.5.3. If the business has had a substantial change or if it has been operating less than one year, the agency shall use a system of anticipating income. §273.11(a)(1)(i) and (iv).

The only issue is whether the agency correctly determined petitioner’s income for FS purposes after learning that he owned the [REDACTED]. Based upon the above citations, the agency did exactly as required. It took the 2011 net business income, added back in depreciation, and divided by twelve. The amount was \$1,682.92 per month. Adding to the total is the amount that petitioner previously reported as wages, \$1,200 per month. Since those wages were taken as a deduction on the tax return, they had to be counted as well (another way that the agency could have calculated the monthly income would have been to add both depreciation and “compensation of officers” to the net income to obtain self-employment income; the result would have been the same).

Based upon those numbers, the agency correctly closed FS. If petitioner believes that the business has had a substantial change due to the construction in [REDACTED] he can report and verify the change to the agency. The agency can then determine if the self-employment income can be re-determined.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner’s self -employment income caused him to be over the FS gross income limit.

THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 28th day of September, 2012

Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

c: Brown County Human Services - email
Department of Health Services - email



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The preceding decision was sent to the following parties on September 28, 2012.

Brown County Human Services
Division of Health Care Access and Accountability