



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/143703

PRELIMINARY RECITALS

Pursuant to a petition filed September 06, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 10, 2012, at Sparta, Wisconsin.

The issue for determination is whether the La Cross County Department of Human Services (the Department) correctly terminated Petitioner's FoodShare benefits, effective October 1, 2012.

The record was held open to give the agency an opportunity to submit a more legible copy of the Form K-1 it completed and a copy of the case comments. The documents have been marked collectively as Exhibit 4.

The record was also held open to give [REDACTED] the father of Petitioner's children, an opportunity to submit a copy of his 2010 tax return, since the 2011 is not yet completed. At his request, [REDACTED] accountant submitted a copy of his 2010 tax return. The accountant also submitted a copy of Petitioner's 2010 Self-Employment Income Worksheet and copies of her 2010 schedule K-1s for the Outskirts gentlemen's club and for the Outskirts property management company. [REDACTED] tax return has been marked as Exhibit 5; Petitioner's Self-Employment Income Worksheet and copies of her schedule K-1s have been marked collectively as Exhibit 6.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Tom Miller

La Crosse County Department of Human Services
300 N. 4th Street

PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County, which is a part of the Western Consortium.
2. On August 28, 2012, the agency sent Petitioner a notice of adverse action indicating that her FoodShare benefits would be ending effective October 1, 2012, because her household income was over the program limits. (Exhibit 3, pgs. 22-28)
3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 3, 2012. (Exhibit 1)
4. Petitioner has resided at [REDACTED] for eight years. (Petitioner's testimony)
5. Petitioner lives with her son and with [REDACTED] the father of the child. As such, it is a household of three. There are no elderly, blind or disabled members in the household.
6. Petitioner and [REDACTED] own the home at [REDACTED] both their names are on the deed/title. [REDACTED] pays the mortgage and property taxes on the home, which total \$1497 per month. (Petitioner's testimony)
7. Both their names are on the electric/gas bill, but only Petitioner's name is on the propane bill and phone bill. (Petitioner's testimony)
8. [REDACTED] receives mail at the [REDACTED] address. (Petitioner's testimony; testimony of [REDACTED])
9. [REDACTED] has two boats, a golf cart, two four-wheeled vehicles, a Mule/Gator vehicle and tools at the [REDACTED] address. The truck/snow plow for Outskirts Management LLC is also on the property.
10. [REDACTED] 2010 tax return lists his home as [REDACTED] [REDACTED] claimed the child as a dependent on that return. (Exhibit 5)
11. Petitioner and [REDACTED] are each 1/3 partners in Outskirts, LLC, a gentleman's club (hereinafter referred to as "the gentleman's club") and Outskirts Management, LLC (a property management company; hereinafter referred to as "the property management company"). It is unclear from the record who is the third partner in these business ventures. (Exhibit 6; [REDACTED] testimony)
12. Petitioner also earned a salary in the amount of \$320 per week for work as a "bartender" at the gentleman's club, although her last paycheck was issued on July 13, 2012. ([REDACTED] testimony)

DISCUSSION

The County is required to verify certain factors relating to Food Share. 7 C.F.R. § 273.2(f)(1); See also, 7 C.F.R. §§ 273.2(f)(2)(i) & (f)(8)(i)(A); *Food Share Wisconsin Handbook (FSH)*, § 1.2.6. "Household composition" is a mandatory item of non-financial verification. *FSH*, §1.2.3.7. Income of all household members is also a required verification item. *FSH* § 1.2.4.1. In addition, "questionable items" must be verified as well, including household composition. *FSH* § 1.2.5. The client has the primary responsibility for providing verification. 7 C.F.R. §§ 273.2(f)(5)(i); *FSH* §1.2.1.3. Food Share may be denied if required verification is not provided within 10 days. 7 C.F.R. § 273.2(f); *FSH* § 1.2.1 & § 1.2.1.2.

It is the agency's contention that [REDACTED] resides with Petitioner and as such, his income must be included when determining financial eligibility for FoodShare benefits.

The preponderance of the credible evidence supports a finding that [REDACTED] does, in fact, reside with Petitioner at [REDACTED]. First, they own the home together. Second, [REDACTED] pays the mortgage and property taxes and his name is on some of the utility bills. Third, [REDACTED] stores a significant amount of property at the home. Fourth, [REDACTED] receives mail at the [REDACTED] address. Fifth, [REDACTED] has listed the [REDACTED] address as his home address on his tax returns, which include a signed authorization sheet, stating that under penalties of perjury, [REDACTED] examined the tax return and that to the best of his knowledge and belief, the information in the tax return is true, correct and complete.

Petitioner's claim that [REDACTED] lived elsewhere is self-serving and unsupported by the record. Indeed, Petitioner has provided no documentation, such as a lease or rent receipts to establish that [REDACTED] lives anywhere other than the [REDACTED] address.

Based upon the foregoing, it is found that [REDACTED] lives with Petitioner. Because [REDACTED] lives with Petitioner, his income must be included when determining Petitioner's financial eligibility for FoodShare benefits.

Eligibility and benefit calculations for FoodShare are based upon prospectively budgeted monthly income using estimated amounts. *FSH §4.1.1* In order to be eligible, FoodShare groups must have gross income at or below 200% of the Federal Poverty level, which for a household of three is \$3,182.00 per month. *FSH §4.2.1.1 and 8.1.1* If household income goes over 200% of FPL, the FoodShare case will close. *FSH §4.2.1.1*

Petitioner contested the agency's calculation of the household income. Looking at the tax documents submitted by [REDACTED] Petitioner's household income works out to be as follows:

Petitioner's income:

\$1157.49 Self-Employment Income per SEI worksheet and form K-1's

Petitioner's salary from the gentleman's club was not included, because she allegedly stopped receiving her weekly salary in July 2012.

[REDACTED] Income:

\$2697.75 (\$32,373 gross income NOT adjusted gross income from form 1040 ÷ 12 months)

Under FSH §4.3.3.5.3 deductions for federal, state and local taxes are not permitted.

The combined household income:

\$3855.24 per month

To be eligible for FoodShare, a household of three must have income of less than \$3,182.00 per month. Petitioner's household income of \$3855.24 is over the \$3,182.00 gross income limit. As such, she is not eligible for FoodShare benefits.

Petitioner should note that she may be liable for a substantial overpayment, especially since the best, most legible information currently in the record is from a 2010 tax return. The agency will have to determine whether it will seek an overpayment in a separate action. If it does so, Petitioner may file a NEW appeal.

CONCLUSIONS OF LAW

The agency correctly terminated Petitioner’s FoodShare benefits effective October 1, 2012.

THEREFORE, it is ORDERED

That the Petition is 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, 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 Milwaukee,
Wisconsin, this 19th day of October, 2012.

Mayumi M. Ishii

Administrative Law Judge
Division of Hearings and Appeals

c: Division of Health Care Access and Accountability, DHSADHCAA@Wisconsin.gov -
HSWebsiteFeedback@co.la-crosse.wi.us - La Crosse County



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The preceding decision was sent to the following parties on October 19, 2012.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability