



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/145029

PRELIMINARY RECITALS

Pursuant to a petition filed November 02, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on December 04, 2012, at Wausau, Wisconsin.

The issue for determination is whether the county correctly determined petitioner's income for October, 2012 FS benefits.

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: Jessica Schmidt

Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner applied for FS benefits for a four-person household on October 3, 2012. On November 5, 2012, the respondent sent petitioner notice denying his application for failure to comply with a previously sent Notice of Proof Needed.

3. The total income in the household was \$4,833.11; the gross income limit for FS eligibility was \$3,842.00. Net adjusted income for petitioner's household was \$3,706.49; the net income limit for FS eligibility was \$1,921.00.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget **all earned and unearned income of the FS household**. 7 C.F.R. §273.9(b). This includes child support, Supplemental Security Income (SSI), SSDI, child support, and W-2 payments received by household members. FoodShare Wisconsin Handbook, Appendix section 4.3.1.

FS benefits are calculated pursuant to 7 C.F.R. § 273.9. The maximum FS allotment amounts, based on household size, are listed at FoodShare Wisconsin Handbook, Appendix 8.1. In general, a household must *initially* pass the so-called "**gross income limit**". The FS eligibility calculation process allows for certain deductions from gross income to arrive at a "**net income**" then tested against a "**net income limit**". But this process only occurs if the household *first* passes the gross income test. If the applying household does not pass the gross income test, then the net income test, and the applicable deductions, are not even reached.

The gross income limit test does not apply to households with elderly or disabled members. FoodShare Wisconsin Handbook. "Disabled" means that the applicant is receiving one of the following: Supplemental Security Income (SSI) or Disability Insurance Benefits (DIB) from the Social Security Administration; interim assistance pending a SSI or DIB application from the Social Security Administration; SSI-State Supplement benefits from the State in which he or she resides; Veteran's Administration benefits of certain types; retired federal workers receiving disability payments; and railroad workers receiving an annuity under the Railroad Retirement Act of 1974. See, 7, C.F.R. § 271.2 *Definitions. Elderly or disabled member*, at §§ (1-11); see also, 7 C.F.R. § 273.9(d)(3). ("Elderly" means 60 years old or older.) *Ibid*.

In this case, the record does not demonstrate that petitioner is either disabled or elderly. Therefore, petitioner's FS household must first pass the gross income eligibility limit. Petitioner's FS household of four has a categorical gross income limit of \$3,842.00. per *FoodShare Wisconsin Handbook*, §8.1.1 (200% FPL). Petitioner's household's gross income of \$ 4,833.11 was above the gross income eligibility limit for a household of four.

The issue in this case is whether the county correctly determined income for October, 2012. The county based its calculations on information provided by petitioner with his online Access application. Petitioner concedes that the income figures that he submitted at the time of application were correct at that time. He notes, however, that his income varies, and the income represented at the time of application is not consistent.

Based on the record before me, I find that the income calculated by the county was correct. The county can only base its determination on the information available to it; if petitioner's income varies, it is up to him to demonstrate that. He did not do so at the time of application, nor at hearing. He testified that he had not reapplied at the time of hearing, and was encouraged to do so. The fact is that when the calculations were made, petitioner received the reported income, and thus it was counted properly.

CONCLUSIONS OF LAW

The county correctly determined FS eligibility for October, 2012.

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 served and 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 Madison,
Wisconsin, this 27th day of December, 2012

\sPeter McCombs
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 December 27, 2012.

Marathon County Department of Social Services
Division of Health Care Access and Accountability