



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/145104

PRELIMINARY RECITALS

Pursuant to a petition filed November 06, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Manitowoc County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on December 18, 2012, at Manitowoc, Wisconsin. During the hearing, the county agency was unable to provide a copy of the relevant notice of decision. However, the county agency faxed the notice to DHA after the hearing.

The issue for determination is whether the county agency correctly discontinued the petitioner's FoodShare (FS) benefits effective November 1, 2012, due to gross income above the FS gross income limit for a FS household of one.

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: Cheryl Basken, ESS

Manitowoc County Department of Human Services

3733 Dewey Street

Manitowoc, WI 54221 -1177

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. Petitioner received FoodShare (FS) benefits for a FS household of one.

3. As part of his October, 2012 FS review application, the petitioner verified that he receives earned income from his employment.
4. The petitioner has not applied to the Social Security Administration (SSA) or the Disability Determination Bureau (DDB) to be determined disabled for MA eligibility purposes. As a result, he has not been determined “disabled” by SSA or DDB.
5. The gross household income of petitioner’s FS household for October, 2012 was \$1,886.45 due to his earned income.
6. The FS gross income eligibility limit for a household of one is \$1,861.67.
7. The county agency sent an October 19, 2012 Notice of Decision to the petitioner stating that his FS benefits would discontinue effective November 1, 2012, due to his household gross income of \$1,886.45 was above the gross income limit of \$1,861.67 for a FS household of one.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. §273.9(b). From the gross household income, certain deductions as discussed in the *FoodShare Wisconsin Handbook*, §4.6 are allowed: (1) standard deduction - which currently is \$134 per month for all households. 7 C.F.R. §273.9(d) (1); (2) earned income deduction - which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d) (2); (3) medical expense deduction – for medical expenses exceeding \$35 in a month for an elderly or disabled person. 7 C.F.R. §273.9(d) (3); (4) dependent care deduction for child care expenses. 7 C.F.R. §273.9(d) (4); and (5) shelter expenses deduction - the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d) (5). (Emphasis added). The maximum FS allotment amounts, based on household size, are listed at *FoodShare Wisconsin Handbook*, §8.1.7. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wi.gov/fsh/>.

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*.

The petitioner is not elderly or disabled. Because petitioner is not disabled or elderly (under 65 years of age), petitioner’s FS household must first pass the gross income eligibility limit. Petitioner’s FS household of one has a categorical gross income limit of \$1,861.67 per *FoodShare Wisconsin Handbook*, §8.1.1 (200% FPL). Petitioner’s gross earned income of \$1,886.45 was above the gross income eligibility limit for a household of one. The petitioner was unable to refute the county agency’s calculation of the petitioner’s household’s gross income. As explained above, a household must *initially* pass the so-called

“**gross income limit**” in order to move on to the second process of calculating the household’s net income and testing that income against the net income limit. In this case, the petitioner’s household’s income did not pass the gross income test. The petitioner was unable to refute that petitioner’s gross FS household income of \$1,886.45 was above the gross income limit of \$1,861.67 for a FS household of one. Accordingly, based upon the above, I must conclude that the county agency correctly discontinued the petitioner’s FoodShare (FS) benefits effective November 1, 2012, due to gross household income above the FS gross income eligibility limits for a FS household of one.

CONCLUSIONS OF LAW

The county agency correctly discontinued the petitioner’s FoodShare (FS) benefits effective November 1, 2012, due to gross household income above the FS gross income eligibility limits for a FS household of one.

THEREFORE, it is

ORDERED

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 19th day of December, 2012

\sGary M. Wolkstein
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 19, 2012.

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