FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOO/144944

PRELIMINARY RECITALS

Pursuant to a petition filed October 31, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Columbia County Health & Human Services in regard to FoodShare benefits (FS), a hearing was held on December 04, 2012, at Portage, Wisconsin.

The issue for determination is whether respondent properly determined petitioner's unearned income.

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: Jeannette Gessner
Columbia County Health & Human Services
2652 Murphy Rd
PO Box 136
Portage, WI 53901

ADMINISTRATIVE LAW JUDGE:
Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Columbia County.
2. Petitioner received notice that her FS benefits would be terminated effective October 1, 2012, due to income in excess of program limits.

3. Respondent attributed $2,000.00 in monthly unearned income to petitioner pertaining to monies gifted to petitioner by her parents.

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). A gift from a family member not in the FS household to a FS household member would nominally be considered unearned income. In the *FoodShare Wisconsin Handbook*, there is a section relating to unearned income. See *FoodShare Wisconsin Handbook*, §4.3.4.1. The provision concerning gifts states that unearned income that is to be counted includes: "20. Monetary gifts over $30 a calendar quarter. Calendar quarter: 3 consecutive months beginning with January, April, July or October." Id.

This situation is also discussed in the Code of Federal Regulations, which provides:

> (c) Income exclusions. Only the following items shall be excluded from household income and no other income shall be excluded:
>
> (2) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter.

7 CFR §273.9(c).

Income in the FS program is budgeted prospectively:

> Eligibility and benefit calculations for FS are based on prospectively budgeted monthly income using estimated amounts. The income to be budgeted is identified through the interview (2.1.3) and the verification (1.2.1) process. Only include income actually available to the group. Do not budget income until the first month in which it is received. The worker must use the best-verified information available when determining the best estimate of income.

FoodShare Wisconsin Handbook, §4.1.1.

And finally, The *FoodShare Wisconsin Handbook* also instructs how loans are to be considered:

> Disregard as income any loan to the FS group. This includes loans from private individuals and commercial institutions.

Handbook at § 4.3.4.3.

I must first determine whether the monies provided by petitioner's parents constitute a gift or a loan. The petitioner's father has provided a hand-written note to respondent, wherein he writes that, "[redacted] is currently unemployed and her mother and I have been loaning her money for food, utilities and rent." Unfortunately, the terms of the purported loan have not been reduced to writing. Petitioner testified that she has not repaid any of the approximately $4,000.00 that her parents have loaned her. She further stated that there is no time table for repayment, but expects to repay them within a year. Unfortunately, without a written agreement, it is nearly impossible to distinguish the purported loan funds from a gift. Petitioner's parents did not appear at hearing, and therefore no sworn testimony was received from them in this regard. While I do not necessarily doubt petitioner's intentions to repay her parents, the record before me is not sufficient to sustain a finding that the monies provided by her parents are, in fact, a loan. If petitioner and

her parents reduce their agreement to writing addressing the terms and conditions by which future monies are loaned, this may alter my opinion as to the character of the money going forward.

The gift of approximately $4,000.00 must be considered further in light of the above regulations. Based on the petitioner's credible testimony, I find that she reported that her father gave her funds in the amount of approximately $2,000.00 on two occasions. Investigators hired by respondent reported that petitioner was receiving $2,000.00 *per month* from her parents, but I find that claim to be completely unsubstantiated. I note that the investigator's own report identifies a Harris Bank account joint ly held by petitioner and her father; according to information that petitioner provided to the investigator (and subsequently confirmed at hearing) her father deposits money in that account that she then has access to. Exhibit 1-3b. Considering that respondent could easily confirm the amounts of money deposited into that account in order to determine the amount of money that petitioner is receiving from her parents, I find that the respondent's assertion that petitioner is receiving $2,000.00 from her parents each month unproven. These records would obviously present the best-verified information available. I will remand this to the respondent to allow it to request the Harris Bank records from petitioner, determine whether petitioner's father's deposi ts constitute ongoing income, re-determine petitioner's unearned income as appropriate, and re-determine petitioner's eligibility for FS benefits.

CONCLUSIONS OF LAW

1. Monies received by petitioner from her parents constitute a gift.

2. A gift constituting an infrequent or irregular occurrence must be excluded from prospective budgeting as it is received too infrequently or irregularly to be reasonably anticipated.

NOW, THEREFORE, it is **ORDERED**

That the petition for review be remanded to the county agency to obtain the petitioner's Harris Bank records via the verification process. Within ten (10) days following receipt of the Harris Bank records, respondent shall determine whether petitioner's father's deposits into the Harris Bank account constitute ongoing income, re-determine petitioner's unearned income as appropriate, and re -determine petitioner's eligibility for FS benefits.

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 2nd day of January, 2013.

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\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 January 2, 2013.

Columbia County Health & Human Services
Division of Health Care Access and Accountability