



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

FOO/145003

PRELIMINARY RECITALS

Pursuant to a petition filed November 01, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on January 22, 2013, at Balsam Lake, Wisconsin. A hearing scheduled for November 29, 2012, was rescheduled at the petitioner's request.

The issue for determination is whether the county agency correctly determined that the petitioner's gross income exceeds the FoodShare limit.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

By: [REDACTED] (husband)

[REDACTED]

Respondent:

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

By: Nancy Randall

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Polk County. She lives with her husband. They have no children living with them.

2. The county agency ended the petitioner's FoodShare benefits as of September 1, 2012, because her gross income exceeded the program's limit.
3. Two hundred percent of the federal poverty level for a two person household is \$2,522 per month. *FoodShare Wisconsin Handbook*, § 8.1.1.
4. The petitioner and her husband own a farm. Her 2011 federal income tax return indicates that they had \$388,228 in gross income, \$405,576 in expenses, and \$69,545 in depreciation.

DISCUSSION

Wisconsin FoodShare policy states that “[m]ost FoodShare groups are considered categorically eligible if their gross income is at or below 200%” of the federal poverty level. *FoodShare Wisconsin Handbook*, § 4.2.1.1. The only exceptions to this rule are for those with felony drug convictions or who have been found to have committed an intentional policy violation of the program. *Id.* For a two-person household, the size of the petitioner's, as of September 1, 2012, when the agency's decision took effect, 200% of the federal poverty level is \$2,522 per month. *FoodShare Wisconsin Handbook*, § 8.1.1. Household income includes all income from any source unless FoodShare regulations specifically exclude it. 7 CFR § 273.9(b). Self-employment income must be averaged “over the period the income is intended to cover...” 7 CFR § 273.11(a)(1)(i). The petitioner's household sole source of income comes from farming, which is varies from month to month, so it must be averaged over the entire year. When determining income for FoodShare benefits, agencies must add depreciation back in. *See* 7 CFR § 273.11(b)(2)(iii).

The county agency used the petitioner's 2011 federal tax return to determine her income. She testified that this is inaccurate because that year approximately \$19,000 in debts that were written down on various loans and credit cards were considered income. She did not request that self-employment reporting forms be used instead of her tax return or contend that, other than the income from the alleged write-down of the debts, her 2011 tax return misstates her current income.

The petitioner did not provide sufficient documentation to prove absolutely that the write-down was added to her income. Nor do I find anything in 7 CFR §273.9(c) that specifically excludes this type of income. Still, Wisconsin requires agencies generally determine income by using the best information available to obtain the best estimate of the recipient's prospective income. *BWI Operations Memo*, 97-113, October 31, 1997, p.3. The petitioner did testify credibly that the \$19,000 was counted as income. Assuming this will not be recurring income, counting it to determine the petitioner's future income will overstate that income. Because there is no other objection to the tax return, I will subtract \$19,000 from her 2011 household income to determine her current income. (Her 2012 tax return has not been completed.)

That return included \$388,228 in gross income, \$405,576 in expenses, and \$69,545 in depreciation. Subtracting the expenses from income and adding depreciation back as 7 CFR § 273.11(b)(2)(iii) requires gives \$52,197. Subtracting the \$19,000 write-down of debt reduces this to \$33,197. Dividing this annual amount by 12 leaves a monthly income of \$ 2,766.42. Because this is still more than the \$2,522 gross income limit for a two-person household, I must uphold the agency's decision.

CONCLUSIONS OF LAW

The county agency correctly determined that the petitioner's gross household income exceeds the FoodShare limit.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 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 29th day of January, 2013

\sMichael D. O'Brien
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 29, 2013.

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