



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of

[REDACTED]

DECISION

ENE/145181

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed November 13, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Racine County Department of Human Services in regard to Energy Assistance, a hearing was held on December 18, 2012, at Racine, Wisconsin.

The issue for determination is whether Petitioner's Wisconsin Home Energy Assistance Program (WHEAP) benefits have been correctly calculated.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Administration  
101 East Wilson Street  
Madison, Wisconsin 53703

By: Kristina Ingersoll, Energy Services Worker  
Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Racine County.
2. Petitioner filed this appeal to contest a reduction in the amount of his Wisconsin Home Energy Assistance Program (WHEAP) benefits.
3. Petitioner applied for WHEAP benefits on October 23, 2012. On the application he reported a household of four; himself, his spouse and their two children (a son - DOB [REDACTED] 95 and a daughter - DOB [REDACTED] 92).

4. In his application for assistance for the 2013 heating year Petitioner reported income for himself and his spouse but did not report the income of his daughter. She was working during the period of the three months prior to the month of application.
5. For the 2013 heating year Petitioner was awarded \$183.00 for heat assistance and \$262.00 of the benefit assistance. For the 2011 heating year Petitioner received \$373.00 in heat assistance and \$208.00 of public benefit (electric) assistance. For the 2012 heating year Petitioner received heat assistance of \$286.00 and a public benefit assistance of \$226.00. In 2012 he also received crisis assistance and furnace assistance in the amount of \$1325.00.

### DISCUSSION

Energy Assistance is a state-run program established by federal law. See 42 USC § 8621, et seq. and Wis. Stat. § 16.385. Rules for the program must follow Wisconsin statutes, but where the statutes are silent the Department of Administration may set policies. Eligibility depends upon a household's income not exceeding 60% of the state average. *Wisconsin Home Energy Assistance Program, Program and Operations Manual (Manual) at §1.3.1 and §2.3.2. (Found online at <http://homeenergyplus.wi.gov/docview.asp?docid=23560&locid=25> ). Applicants must verify the income of everyone in the household for those three months. Id., §3.4.27.*

The *Manual*, at Chapter 10, pages 10-6 and 10-10, details who is a household member:

#### **Household Member**

Anyone who on the date of application is living in the household at the time of application who is not a Temporary Household Member. Do not count a person who may have lived in the household during a portion of the preceding three months but is no longer in the household on the application date. Do not count the person or their income to determine total household size or income.

#### **Temporary Household Member**

Anyone who is not a permanent resident in the household, who will have a stay duration in the household of less than 30 days beyond the application date. The applicant certifies the temporary household member is not going to be in the home for more than 30 days.

*Also see, Manual at §2.2.26.*

The gross income of all household members is to be counted. *Manual, § 2.3.2.*

Again, Petitioner filed this appeal to contest the reduction in the amount of his WHEAP benefits from the 2012-2013 heating season. While it is true that those benefits were reduced relative to other years, I note that WHEAP benefits are different from year to year as funding is not the same from year to year so a reduction in benefits is possible even if other household circumstances do not change. Nonetheless, it is apparent that benefits here may have been even further reduced had the income of Petitioner's daughter been reported and included in the calculation of the amount of the benefit for the 2013 heating season. Regardless, it cannot be determined that the benefits were correctly calculated without a redetermination of the benefits with the inclusion of the daughter's income.

### CONCLUSIONS OF LAW

That the income of Petitioner's daughter, a member of his household, was not reported and included in the calculation of the amount of Petitioner's WHEAP benefits thus it cannot be determined whether the amount of the benefit was correctly determined.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency with instructions to take the steps necessary to redetermine the amount of Petitioner's WHEAP benefit for the 2013 heating season and to take into account the income of Petitioner's daughter when it does so. It must request that information of Petitioner within 10 days of the date of this order, giving Petitioner 10 days to provide it and then complete the recalculation of benefits within 10 days of the date of receipt of the additional information. If the information is not received the application should be denied pursuant to *Manual*, §3.2.5.

As either a redetermination of benefits or a closure could yield an overpayment, the agency must follow the program requirements detailed in the *Manual* as to WHEAP requirements for an overpayment.

**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 Administration. 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: 101 East 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 7th day of January, 2013

---

\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 7, 2013.

Racine County Department of Human Services  
DOA - Energy Assistance