



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/145621

PRELIMINARY RECITALS

Pursuant to a petition filed November 28, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on December 27, 2012, at Green Bay, Wisconsin.

The issue for determination is whether the Department erred in its termination of petitioner from the FS program due to excessive 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: Sarah Burden

Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner was casehead of a FoodShare household of 3, including her liv-in boyfriend. In October 2012, the Department determined that the household was over the program income limit

and terminated FS benefits. Notice indicating the termination was sent to petitioner on November 1, 2012.

3. Included in the income counted by the Department was reimbursement the boyfriend received from his employer for costs he pays up front in his job driving a truck. The costs included gas and maintenance for the vehicle he drives. The pay stubs considered by the Department set this amount off from wages by designating the sum as "AUTO REIMBRS." For the paystubs provided as exhibits in this case (see exhibit #1) the reimbursement sum was \$705.20 for one month.
4. Petitioner filed a timely appeal.

DISCUSSION

Eligibility for FoodShare is determined by consideration of the income of the household. Income includes such things as wages, salaries, tips, advances on wages, and many other types of pay as set forth in the *FoodShare Wisconsin Handbook* at Section 4.3. But, the Handbook specifically states that "[r]eimbursements or flat allowances for job or training related expenses" are not to be counted. The cost of gas and vehicle maintenance is directly related to petitioner's boyfriend's performance of his job as a truck driver. It is so integral to his job that his employer reimburses him for his actual costs. This is not countable income and should be disregarded per FS Handbook § 4.3.2.2.

CONCLUSIONS OF LAW

The Department erred in its termination of petitioner's FS benefits.

THEREFORE, it is

ORDERED

This matter is remanded to the Department and its county agent with instructions to reverse the termination that was effective November 1, 2012, and issue retroactive FS benefits/supplements to that date. The Department must redetermine eligibility by calculating household income and disregarding the reimbursement line item on Mr. [REDACTED]'s paystubs if that line item relates to gas and maintenance. These actions must be completed within 10 days.

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 18th day of January, 2013

\sJohn P. Tedesco
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 18, 2013.

Brown County Human Services
Division of Health Care Access and Accountability