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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION ON REHEARING

FOO/146168

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 27, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was scheduled for January 16, 2013, in Milwaukee, Wisconsin. The petitioner did not appear, and the appeal was dismissed. The petitioner then timely filed a rehearing request, which was approved, and a hearing was held on March 20, 2013, by telephone.

The issue for determination is whether the Department correctly denied the petitioner's November 21, 2012, FS application, due to excess income.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Interpreter: Tania Bahena

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Katherine May, HSPC Sr.  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. The petitioner filed an FS application on November 21, 2012. Verification was requested, and the petitioner appeared at the agency on January 9, 2013, with paystubs to verify household earnings. After that documentation was reviewed, the agency issued written notice of denial to the petitioner on January 9, 2013. The basis for denial was excess income.
3. The petitioner resides in a household of five persons, three of whom are eligible for FS. There is no dispute that household member MB, age 5, receives state and federal SSI totaling \$781.78 monthly. MB also receives child support of \$476 monthly, per the KIDS database. There is also no dispute that household member AB, age 2, receives state and federal SSI totaling \$781.78 monthly. Thus, these two children alone receive \$2,039.56 monthly.
4. The agency “deemed” a percentage of the income earned by the petitioner and the other adult household member, Juan S., to the three eligible children. The earnings were verified with paystubs submitted on January 9. The deemed amount was \$552.08. This created total gross household income of \$2,591.64 (\$2,039.56 + \$552.08).
5. In calculating FS eligibility, the agency factored in the \$442 utility standard and an undisputed rent cost of \$600 (before 3/5 proration), and subtracted the standard deduction for three persons of \$149 from gross income. This left net income of \$2,442.64. The net income limit for three persons is \$1,591.00. See, Exhibit 1B, budget calculation.

### DISCUSSION

In calculating the petitioner’s eligibility for November, December and January, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department’s *FS Wisconsin Handbook*. The federal rule requires that the agency start with gross, rather than net, income, and allow only a limited number of identified deductions from that income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a case with three eligible persons is currently set at \$149, per *FS Wisconsin Handbook*, 8.1.3. Twenty percent of any earned income is then subtracted as the Earned Income Deduction; that deduction was correctly not given for the children here. A Dependent Care Deduction is also taken if an eligible person incurs day care expenses in order to go to work, an Excess Medical Expense Deduction is subtracted for an elderly or disabled person’s verified allowable medical expenses that exceed \$35 per month, and child support paid out garners a deduction. There is no record of the latter three expenses for the children here. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of that income. 7 C.F.R. §273.9(d)(6)(ii). Based on a \$360 prorated shelter cost (3/5 of \$600) plus the \$442 heating utility standard, the petitioner’s shelter costs totaled \$802. This did not exceed half of the adjusted income (\$1,221), so no excess shelter expense was deducted in the allotment calculation.

The petitioner’s net income of \$2,442 exceeded the 100% FPL net income limit for three persons. 7 C.F.R. §273.10(e)(2) and §273.9(a)2. Therefore, the petitioner’s household was entitled to no FS pursuant to her November 2012 application.

The petitioner may re-apply for FS at any time.

### CONCLUSIONS OF LAW

1. The Department correctly denied the petitioner’s November 2012 FS application, due to excess income.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**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 22nd day of March, 2013

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\sNancy J. Gagnon  
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 March 22, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability