



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

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In the Matter of

[REDACTED]

DECISION

ENE/146368

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 03, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Sauk County Department of Human Services in regard to Energy Assistance, a hearing was held on January 29, 2013, at Baraboo, Wisconsin.

The issue for determination is whether respondent correctly calculated petitioner's income for Energy Assistance program purposes.

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: Cheryl Emery, Energy Services Worker  
Sauk County Department of Human Services  
505 Broadway, 4th Floor  
PO Box 29  
Baraboo, WI 53913

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Sauk County.
2. Petitioner applied for Energy Assistance on or about November 5, 2012.

3. Petitioner's EA application was denied due to income exceeding program limits; Respondent determined that petitioner's income was equivalent to 222.76% of the Federal Poverty Level (FPL).

### **DISCUSSION**

The Wisconsin Home Energy Assistance Program (WHEAP) is mandated by Wis. Stat. §16.385. The Department of Administration administers the program. §16.385(2)(a). The Department does so by publishing the *Wisconsin Home Energy Assistance Program, Program and Operations Manual* (Manual). The Manual must follow the mandate of the statute, but it is up to the Department to specify policies where the statute is silent. The WHEAP has several components. The most commonly used component is Heating Assistance. Following application during a heating season, a Heating Assistance check is issued to the applicant or his/her fuel vendor when the client satisfies eligibility criteria such as household income below 150% of the federal poverty level and the presence of an "energy burden." *Wisconsin Home Energy Assistance Program, Program and Operations Manual*, Chapter 3.

All persons in the household on the date of application are included in the WHEAP unit. See Manual, page 3.3. Income eligibility is based on the household members' income in the three months prior to application. It makes no difference if the household income will increase or decrease in any month outside that three-month period. See Manual, p. 3.7. The three-month income limit (150 percent of federal poverty guidelines) for a one-person household is \$6,071. See <http://www.heat.state.wi.us>.

Petitioner did not dispute the county agency's determination that her household income for the three month period prior to her application was \$6,220.56. However, she argued that the program should use an average of her wages throughout the year, since her employment is highly cyclical. The policy guidelines are clear, however, that eligibility is based on the household members' income in the three months prior to application.

Petitioner also questioned the use of gross income as opposed to net. The WHEAP program rules use gross income, not net income, in determining eligibility.

The WHEAP rules do not give Administrative Law Judges discretion to make exceptions in close or unusual cases. While I empathize with her situation, I must find that petitioner's gross income is over the WHEAP limit, and thus the denial was correct.

### **CONCLUSIONS OF LAW**

The county agency correctly based its determination of petitioner's income eligibility on the basis of her income received during the three months preceding her application.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby 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 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 Madison,  
Wisconsin, this 19th day of February, 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 February 19, 2013.

Sauk County Department of Human Services  
DOA - Energy Assistance