



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147699

PRELIMINARY RECITALS

Pursuant to a petition filed February 28, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on April 22, 2013, at Wausau, Wisconsin.

The issue for determination is whether the Department erred in its termination of petitioner from FoodShare effective March 1, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: MaiKou Yang

Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner underwent a review of eligibility for her 4 person FS group in February 2012. The agency used 2012 tax return information to determine self-employment income for the group. Based on the tax return and the Self-Employment Income Worksheet, the Department calculated

a monthly average self-employment income of \$3,050.67. Petitioner also receives \$417.22 of child support monthly.

3. The Department issued a notice on February 15, 2013 informing her that she was ineligible for FS.
4. Petitioner filed a timely appeal.

DISCUSSION

At the time of the hearing, petitioner did not dispute any of the figures or methods or calculations. Petitioner conceded that they were correct. Petitioner, however, stated that she did not agree with the way the worksheet reflects income as it does not reflect the actual amount of money petitioner has on hand. Petitioner explained that she has many loan obligations and must pay those so cannot use that money for food and other expenses. Petitioner explained that she was hoping that I could grant some exception or exercise some discretion to allow for eligibility.

First, while the worksheet may not be ideal and may not reflect an accurate picture in all circumstances, I find that its use is reasonable in the administration of a program that benefits great numbers of people. Its use makes the administration of the program efficient and provides some level of fairness and uniformity of administration. As for discretion, or fairness, I do not have authority to decide issues based on equity. Case law in Wisconsin has recognized that the powers of administrative agencies are limited to those expressly granted by the legislature or necessarily implied by the statutes. See *DOR v. Hogan*, 198 Wis. 2d 792, 816, 543 N.W.2d 825 (1995). I can only apply the law and rules as they exist. I find no error by the Department.

CONCLUSIONS OF LAW

The Department did not err in its denial of FS as the petitioner's self-employment income makes the group ineligible.

THEREFORE, it is

ORDERED

That this 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 7th day of May, 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 May 7, 2013.

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