



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

ENE/147986

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 11, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Wisconsin Home Energy Assistance Program in regard to Energy Assistance, a telephonic hearing was held on April 25, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied the petitioner's application for Energy Assistance (EA) for being over the income limit.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Administration  
101 East Wilson Street  
Madison, Wisconsin 53703

By: Qiyante Riggins, Energy Services Worker  
Social Development Commission  
Wisconsin Home Energy Assistance Program  
4041 N. Richards St.  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner applied for Energy Assistance on February 26, 2013 as a household of four persons. See Exhibit 1.

3. In the course of processing petitioner's application, the agency determined that petitioner's gross income for January 2013 was \$5696.10 and a total gross income of \$13,290.90 for the three months prior to the month of application. See Exhibit 4.
4. Petitioner was notified on the date of application that she could not receive EA benefits due to excess income. See Exhibit 1.

### DISCUSSION

Wisconsin provides Energy Assistance for qualified low-income households under Wis. Stats. §16.27. The Department of Administration administers the program using the *Wisconsin Home Energy Assistance Program, Program and Operations Manual (Manual)*, available online at <http://homeenergyplus.wi.gov/docview.asp?docid=23560&locid=25>. To be eligible, a household must meet financial and nonfinancial requirements. For the financial requirements relevant to this appeal, the household must pass an income test that is based on sixty percent (60%) of the state median income (smi) level. *Manual*, §2.3.1. If the household's gross income is less than or equal to the income limit for its size, the household passes the income test. Id. If the gross income exceeds the limit, the household is not eligible unless categorical eligibility criteria are met. Id. For a household to be determined as categorically eligible every household member must be a recipient of W-2/TANF, FoodShare, or SSI for each of the preceding three months. Id. There is no evidence in the record to support a finding that this household is categorically eligible.

The income limit for a household of four is \$11,674.00 for a three-month period. See 2012-13 Income Guidelines at <http://homeenergyplus.wi.gov/category.asp?linkcatid=819&linkid=118&locid=25>. Petitioner's total gross income over the three months prior to the month of application was \$13,290.90. The Manual provides that for wages, such as petitioner's, the agency must count all gross income received in the three months prior to the application month by all adults 18 and over living in the household. *Manual* at §2.3.7. Petitioner was, therefore, over the income limit and was not eligible for energy assistance.

As stated above, the income limit for Energy Assistance is based on gross income and not on net income, despite petitioner's request that it be counted that way. The rules do not give Administrative Law Judges discretion to make additional exceptions in close or unusual cases. Further, the argument that petitioner's spouse relied on a handout she received regarding the income guidelines showing a one-month income limit is at best an equitable argument. It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### CONCLUSIONS OF LAW

The agency correctly denied the petitioner's application for EA for being over the income limit.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be 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 Milwaukee,  
Wisconsin, this 30th day of May, 2013

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\sKelly Cochrane  
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 30, 2013.

Energy - Milwaukee County  
DOA - Energy Assistance