FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOO/148241

PRELIMINARY RECITALS

Pursuant to a petition filed March 21, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 15, 2013, by telephone. The hearing record was held open for five days for a submission from the petitioner, which was received.

The issue for determination is the sufficiency of the petitioner's FS allotments from the date of her February 2013 application forward.

There appeared at that time the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Tom Miller, ES Supr.
Western Region for Economic Assistance, at
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:
Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Vernon County.

2. The petitioner applied for FS as a household of one person on February 22, 2013. On March 14, 2013, the Department issued written notice to the petitioner advising that her February FS allotment would be zero (due to proration from the 2/22 date), and her allotments from March 2013 onward would be $16 monthly.

3. The petitioner is self-employed. Her business includes boarding, training, and raising show horses. In the decade preceding 2012, her gross annual business income ranged from $30,000 – $80,000, and she boarded five or six horses annually. Currently, she is boarding two horses.

4. As is customary in the FS program, the agency computed the petitioner's self-employment income by relying upon her 2012 federal income tax return. That return showed gross income of $60,797, expenses of $60,403, and depreciation of $16,504. This resulted in calculated self-employment income of $16,898 ($1,408.16 monthly), with depreciation added back in to income.

5. Of the $60,797 2012 income, $50,000 was attributable to the sale of one horse, Poseidon's Phantom.

6. The petitioner raises hay on 90 acres to feed her horses. A severe drought occurred in 2012, reducing her hay crop. The petitioner began purchasing hay in January 2013 for her business. In March 2013, she spent $742. 50 purchasing hay.

7. In the allotment calculation, the Department credited the petitioner with the utility standard to offset utility expenses, but subtracted no shelter cost because her home was foreclosed upon. There is no evidence in the record that the petitioner pays out child support, which is another deduction in the allotment calculation.

DISCUSSION

I. SELF-EMPLOYMENT INCOME INTRODUCTION.

The petitioner's gross income and tax deductions from 2012 are not in dispute. Rather, the petitioner argues that the agency should consider her lower income and higher expenses from 2013, when determining FS eligibility.

The controlling federal FS rule directs the agency to include all income, unless it is explicitly excluded in the FS rules:

> *273.9 Income and deductions.*
> (a) Income eligibility standards.
> ...
> (b) *Definition of income.* Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.
> (1) Earned income shall include (i) All wages and salary of an employee.
> (ii) The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business as provided in paragraph (c) of this section.
> ...
> (c) *Income exclusions.*
> (1) [certain vendor payments, such as child care assistance] ...
> (2) Any income in the certification period which is received too infrequently or irregularly to be reasonable anticipated, but not in excess of $30 in a quarter.
> ... [other exclusions not pertinent here]

7 C.F.R. §273.9(a),(b),(c). It also directs that depreciation be added back in to income. *Id.*, § 273.11(b)(2)(iii).

Another portion of the federal FS rule directs the agency to budget income that fluctuates over a multiple-month period by averaging income over the entire one-year certification period. 7 C.F.R. §§ 273.10(c)(3) and 273.11(a); see in accord, *FoodShare Wisconsin Handbook* (*FSWH*), § 4.3.3.5, available at http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm. Thus, the agency was correct to begin its analysis by considering all of the petitioner's 2012 income in determining her eligibility in February 2012.

II. CALCUATION OF THE MARCH ALLOTMENT.

Using the 2012 return, the agency followed a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county 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 one to three 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 given here. A Dependent Care Deduction is also taken if the person incurred day care expenses in order to go to work, an Excess Medical Expense Deduction is subtracted for an elderly or disabled person's 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 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 zero shelter cost (rent/mortgage) plus the $442 heating utility standard, the petitioner's shelter costs totaled $442. This did not exceed half of the adjusted income ($488.77), so no excess shelter cost was deducted in the allotment calculation.

Thus, the March 2013 allotment calculation looked like this:

Gross income	1408.16	
Minus Earned Inc. Deduction	- 281.63	
Minus Excess Medical	-000.00	
Minus Dependent Care	-000.00	
Minus Standard Deduction	-149.00	
Adjusted Income	977.53	
Minus Shelter Deduction	-000.00	($469 is the maximum)
Net Income	977.53	

The correct allotment for one person with net income of $977.53 was $16 in March 2013. *FS Wisconsin Handbook*, 8.1.2, p.9.

III. INCOME DEVIATION DUE TO CHANGED CIRCUMSTANCES.

The burden is on the petitioner to show that her business circumstances have changed in a way that will significantly lower her 2013 income from her 2012 income. The state's policy formulation is as follows:

> **4.3.3.6 Anticipating Earnings**
>
> Calculate self-employment income based on anticipated earnings when:
> 1. The business was not in operation for at least one full month in the prior tax year.
> 2. The business has not been in operation for six or more months at the time of the application.
> 3. Past circumstances do not represent the present.

Examples of changed circumstances are:

1. The start of a business.
2. The owner sold a part or all of his business.
3. The owner is ill or injured and will be unable to operate the business.
4. There's a substantial cost increase causing less profit for each unit sold.
5. Sales are consistently below previous levels beyond normal sales fluctuations.
6. The business is consistently earning above previous levels beyond normal fluctuations.

Changes are effective according to the normal prospective budgeting cycle. The date of an income change is the date you agree a significant change occurred. You must judge whether the person's report was timely to decide any over or underpayment.

Self-employment income, by its very nature is somewhat uncertain. Use of SEIRFs and/or IRS forms to determine monthly average income takes this into consideration.

When a new self-employment business is reported or when a change in circumstance occurs and the past circumstances no longer represent the present, recalculate self-employment income:

1. When <u>six or more months</u> of actual self-employment information is available, calculate monthly average self-employment income using at least six months of prior earnings beginning from the date self-employment began or the date of the significant change.
2. ...

Use the average until the person's next review or if a significant change in circumstances is reported between reviews.

FSWH, § 4.3.3.6. The federal FS rule also decrees that anticipated earnings are to be used for a self-employment business where there is a change in the "household's actual circumstances because the household has experienced a substantial increase or decrease in business ...". 7 C.F.R. § 273.11(a)(1). The federal rule does not provide examples, or limit the changed circumstances rule to the examples given in state policy.

The petitioner argues that changed circumstances are present here for several reasons. The first is that the market for selling show horses has contracted since the recession of 2008, and that she was unable to sell a valuable show horse in latter half of 2012. Thus, her income is down. This is not a persuasive "changed circumstance" argument. If the nature of the petitioner's business and sales market has been down throughout 2012, the market's continued low ebb in 2013 is not a changed circumstance that makes the 2012 tax return information an inaccurate predictor for 2013. The petitioner sold one show horse in 2012, and it is possible that she may still sell her other valuable horse in 2013.

The petitioner's other changed circumstance argument is much better. The petitioner grows 90 acres of hay to feed her horses. Due to the 2012 drought, her hay supply is wiped out. She began having to purchase hay, at inflated prices due to scarcity, in January 2013. Hay that used to sell for $2 per bale, now commands $6 per bale. The petitioner has been in the same business for several decades, and has never seen hay prices at this level. I conclude that the petitioner's need to purchase hay, and purchase it at inflated prices, is analogous to Example #4 in the policy above.

Due to changed circumstances, I will remand this case to the Department with instructions to provide the petitioner with six months of SEIRF forms within 10 days of the date of this Decision. The petitioner must then fill out the SEIRFs and return them to the Department within 10 days. After receiving the SEIRFs, the Department will recalculate the petitioner's income from February 2013 forward. I expect that the petitioner's feed costs will be higher than in 2012, which will lower her income.

CONCLUSIONS OF LAW

1. The petitioner's self-employment business circumstances have changed, due to markedly higher feed costs; this makes use of anticipated earnings appropriate.
2. The Department shall redetermine the petitioner's self-employment income from February 2013 forward by requesting and reviewing six months of SEIRFs, if they are timely submitted.

THEREFORE, it is **ORDERED**

That the petition is remanded to the Department with instructions to:

(1) Issue six months of SEIRF forms to the petitioner within **10** days of the date of this Decision, and

(2) If the petitioner returns the completed SEIRF forms to the Department within **20** days of the date of this Decision, to redetermine the petitioner's income for February 2013 forward, within **30** days of the date of this Decision.

In all other respects, the petition 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 20th day of May, 2013

\sNancy J. Gagnon
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 20, 2013.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability