



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148256

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regards to the discontinuance of FoodShare benefits (FS), a telephone hearing was held on April 25, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner's FS on April 1, 2013, due to household income in excess of program limits.

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: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. On March 1, 2013, she was the casehead of a three person FS group composed of herself and two minor children; and the group received \$240 of FS in each of the months of January, February and March, 2013.
2. On March 6, 2013, the petitioner reported that [REDACTED] [REDACTED] had moved into the household; he is the father of her two children in the household; and that he had self-employment earnings from an auto repair business. The agency requested verification of [REDACTED]'s earnings.

3. On March 8, 2013, the petitioner provided ██████'s 2011 federal tax return, including his Form 1040 Schedule C, "Profit or Loss from Business". The Schedule C revealed that his net profit or loss after expenses and depreciation was \$1,178 in 2011 (line 31); and that he had deducted \$67,627 in depreciation expenses in that tax year.
4. At present, ██████'s 2012 tax return has not been prepared or submitted.
5. The Department added back the depreciation of \$67,627, to the net income of \$1,178, to arrive at ██████'s estimated total countable annual income for the program's purposes of \$68,805, from self-employment in auto repair, or pro-rata, \$5,733.75 per month. See, Exhibit #2, p.1.
6. The Department added the petitioner's gross earned income of \$1,377.71 to ██████'s gross estimated income of \$5,733.35, for gross total income of \$7,111.06 per month.
7. The gross income limit for a FS household of 4 persons is \$3,842 per month.
8. On March 11, 2013, the Department issued a Notice to the petitioner informing her that her FS would be discontinued, effective April, 2013, due to income in excess of program limits.
9. On March 25, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals.

DISCUSSION

The FS gross income limit for a household of 4 persons is \$3,842. See, *FoodShare Wisconsin Handbook*, §8.1.1. In determining self-employment income, the agency used the best evidence available, the petitioner's 2011 tax return and the Schedule C. See, *FoodShare Wisconsin Handbook*, § 4.3.3.5.3. It correctly added back depreciation to net profit to ascertain ██████'s estimated gross self employment income from auto repair business. This is required by the FS Program. See, *FoodShare Wisconsin Handbook*, § 4.3.3.5.3. Here, when this addback is performed, the household's gross income is \$7,111.06 per month, far in excess of the gross income limit of \$3,842. There is no exception under the program policies or federal law for these circumstances. Rather, depreciation is generally added back to self employment income and treated as income for FS purposes.

This household was no longer eligible and the Department correctly discontinued FS in April, 2013.

CONCLUSIONS OF LAW

That the Department correctly added back depreciation to compute ██████ ██████'s self employment income and correctly discontinued the petitioner's FS effective April 1, 2013, due to household income in excess of program limits.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same 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 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 2nd day of May, 2013

\sKenneth D. Duren, Assistant Administrator
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 2, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability