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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/150424

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 1, 2013, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Columbia County Health & Human Services to discontinue FoodShare benefits (FS), a hearing was held on July 31, 2013, by telephone.

The issue for determination is whether there has been a change in circumstances in self-employment to warrant utilizing monthly income reports instead of 2012 tax returns.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Carol Bride

Columbia County Health & Human Services  
P.O. Box 136  
Portage, WI 53901

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Columbia County.
2. Petitioner and her husband operate a dairy farm. In addition petitioner is employed outside of the farm.
3. The couple did their annual review for FS and BadgerCare Plus for their three-person household in May, 2013. The county obtained copies of the 2012 tax returns for determining self-employment income. Although the Schedule F showed a net loss of some \$62,000, after adding

back in depreciation, amortization, and capital gains the result was yearly income of \$28,147, and thus monthly income of \$2,345.58. See County's Exhibit 4.

4. Petitioner's monthly earned income from employment is \$1,200.
5. By a notice dated June 6, 2013, the county informed petitioner that FS would end July 1, 2013 because income was over the program limit.
6. In 2013 the farm has had a major decrease in milk income due to having a smaller herd (the capital gains were sales of cows) and insufficient stored feed so that they have to purchase feed. Milk production of the individual cows also is lower due to insufficient diet. There are no anticipated sales of livestock.

### DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipients' nonexempt income. 7 C.F.R. §273.9(b). The gross income limit for a household of four is \$3,182; the net income limit is \$1,591. FS Handbook, Appendix 8.1.1 and 8.1.4.

Treatment of self-employment income is described at 7 C.F.R. §273.11(a). Such income is annualized over a 12-month period, unless the income is intended to meet the household's needs over a shorter period. §273.11(a)(1)(i) and (iii). To determine monthly income, the agency must take yearly income, add back in depreciation, amortization, net loss carryovers, and personal expenses, and then divide by twelve. §273.11(a)(2). If the business has had a substantial change or if it has been operating less than one year, the agency shall use a system of anticipating income. §273.11(a)(1)(i).

In addition, the county must budget the prior year's net capital gains, again dividing the total by twelve. 7 C.F.R. §273.11(a)(3); Handbook, App. 4.3.3.3. However, if the self-employment is determined on a monthly anticipated income basis, only anticipated capital gains shall be used. 7 C.F.R. §273.11(a)(3). Thus, just as with regular self-employment income, if there is a basis for using anticipated income, such as a decrease in business income, capital gains also should be determined on an anticipated basis.

The gross income as determined by the county was \$3,545.68, which is above the gross income limit. Thus the only way that the household can be eligible for FS is if anticipated income, rather than 2012 yearly income, is utilized to determine current eligibility.

7 C.F.R. §273.11(a)(1)(i) says only that anticipated income should be used if the household experiences a "substantial increase or decrease in business." The FS Handbook, App. 4.3.3.6 provides more detail:

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 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.

Petitioner testified that past circumstances do not represent the present. She points to sales consistently below previous levels along with a substantial cost increase resulting in less profit. The sales decreases are due to two factors – the farm has fewer cows and the cows are producing less milk due to insufficient feed. The cost increase is due to having to purchase feed. I note that in addition petitioner's husband had ankle surgery in July and thus has to hire help at least for the short term. Finally it is not anticipated that there will be capital gains as no sales of livestock are anticipated.

I conclude that based upon all of these factors the county should utilize anticipated earnings rather than 2102 earnings to determine current farm income. The county thus should re-determine household income beginning July 1, 2013 using the policies found in the Handbook, App. 4.3.3.6. I will leave it up to the agency and petitioner to determine which month to start the self-employment forms as it is unclear from the hearing exactly when the decrease in business occurred.

### **CONCLUSIONS OF LAW**

Petitioner's farm has experienced a substantial decrease in business, and thus anticipated earnings should be utilized in determining current farm income.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to re-determine petitioner's self-employment income retroactive to July 1, 2013 utilizing anticipated earnings instead of 2012 yearly income, and to re-determine FS eligibility based upon the recalculation. The county shall do so and shall issue appropriate supplemental FS within 10 days of this decision subject to delays necessary to allow petitioner to compile the monthly self-employment sheet to enable the re-determination.

### **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 5th day of August, 2013

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\sBrian C. Schneider  
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 August 5, 2013.

Columbia County Health & Human Services  
Division of Health Care Access and Accountability