



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/150636

PRELIMINARY RECITALS

Pursuant to a petition filed July 12, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare (FS) benefits, a hearing was held on August 13, 2013, at Madison, Wisconsin.

The issue for determination is whether the respondent correctly denied petitioner's application for FS benefits.

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: Ed Shefke

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner applied for FS benefits on or about June 24, 2013.
3. Petitioner's husband has lived in the United States since May of 2013.

4. Petitioner's FS application was denied due to income in excess of FS program limits.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned income. 7 C.F.R. § 273.9(b). The maximum FS allotment amounts, based on household size, are listed at FoodShare Wisconsin Handbook, § 8.1.7. The FS Handbook can be viewed online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

The county agency determines the applicant's income using prospective budgeting; prospective budgeting is the determination of one month's FS benefits based on the agency's best estimate of income and circumstances that will exist in that month. *BWI Operations Memo*, #97-58, p.2, (eff. 09/01/97.). The applicant has the primary responsibility for providing required verification and for resolving any discrepancies or questionable information. 7 CFR 273.2(f)(5); FWH § 1.2.1.3.

In a Fair Hearing concerning the propriety of a discontinuance of benefits, such as this, the county agency has the burden of proof to establish that the action taken by the county was proper. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the discontinuance action was required.

In this case, the negative action was the county agency's denial of petitioner's FS benefits application, because her household income exceeded the program limits for a household of one. Petitioner's spouse was not eligible to receive FS benefits because he was not a citizen or an eligible immigrant. Petitioner was unable to show that the county agency's determination was incorrect. She noted that she is no longer employed, and the respondent recommended that she pursue a new application.

Based on the record before me, I do not find any error in the respondent's denial of petitioner's FS application.

CONCLUSIONS OF LAW

Petitioner is not eligible for FS benefits due to household income in excess of program limits..

NOW, THEREFORE, it is **ORDERED**

That the matter herein be and is hereby 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 12th day of September, 2013

\sPeter McCombs
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 September 12, 2013.

Dane County Department of Human Services
Division of Health Care Access and Accountability