



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/150689

PRELIMINARY RECITALS

Pursuant to a petition filed July 16, 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 telephone hearing was held on August 13, 2013.

The issue for determination is whether the respondent correctly determined that petitioner's household income exceeded FS income eligibility 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: Tom Miller

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. On June 7, 2013, the respondent issued a Notice of Decision to petitioner indicating that FS would be ending on June 1, 2013. Exhibit 3.

3. Petitioner has a household size of 4.
4. Petitioner earns approximately \$1,200.00 each month, and received a gift of \$6,000.00. The gift may be annual. At the time of petitioner's most recent six-month report, petitioner's wife had self-employment income from caring for children, though she no longer is providing said child care.
5. Petitioner's monthly household income, as calculated by the respondent, factored in the \$6,000.00 gift as monthly income based upon income information provided by respondent's employer
6. Petitioner timely filed an appeal concerning the discontinuation of his FS on July 15, 2013.

DISCUSSION

Participation in the FS Program is limited to those whose income is determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. *FS Handbook*, § 4.3.1. Further, income is defined as any gain or benefit that can be used to purchase goods and services. *Id.* Here, the dispute centers on whether the agency correctly determined that the petitioner's income exceeds the limit for FS. Petitioner asserts that the county agency has erred in attributing gross monthly income of \$3566.00 to the household.

The agency determined that the petitioner's countable household income was \$3,566.00, based upon income information provided by petitioner's employer. See, Exhibit 3, EVFE. However, petitioner testified that his employer provided incorrect monthly wage information; it incorrectly factored in an annual gift, which resulted in a skewed monthly income figure. Monthly income attributed to petitioner by respondent is incorrect, and therefore respondent has not substantiated its denial of petitioner's FS benefits. Respondent indicated that it was willing to review this matter further and, if necessary, correct its calculations.

As such, I will remand this matter to the respondent to obtain petitioner's actual wage information and process that information to determine petitioner's ongoing benefit eligibility.

CONCLUSIONS OF LAW

Petitioner's income includes a gift of \$6,000.00. Petitioner's employer incorrectly factored this gift into its calculation of petitioner's monthly income, and respondent relied on this calculation in reaching the FS eligibility determination.

NOW, THEREFORE, it is

ORDERED

That the matter is hereby remanded to the respondent with instructions to recalculate petitioner's monthly income based upon petitioner's actual wages, and review and re-determine petitioner's household's eligibility for FS benefits. This action shall be taken within ten (10) days following the respondent's receipt of wage verification from petitioner.

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 3rd 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 3, 2013.

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