



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████
████████████████████

DECISION

ENE/150811

PRELIMINARY RECITALS

Pursuant to a petition filed July 22, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Door County Department of Social Services in regard to Energy Assistance, a telephonic hearing was held on September 18, 2013, at Sturgeon Bay, Wisconsin. The record was held open for one week for the submission of closing arguments to the Division of Hearings and Appeals (DHA). Both parties timely submitted their arguments to DHA which are received into the hearing record.

In petitioner's prior energy assistance appeal in ENE/146192, ALJ Tedesco concluded in his February 5, 2013 decision that: "The county agency correctly terminated benefits because he failed to provide the requested verification of income." See Exhibit 1.

The issues for the instant determination are: a) whether the county agency correctly denied the petitioner's second April, 28, 2013 energy assistance application for the same reasons the county denied petitioner's October, 2012 EA application in the prior final decision in ENE/146192, issued by ALJ Tedesco; and b) whether the doctrine of claim and issue preclusion applies to the petitioner's April, 2013 energy assistance denial because his current appeal addresses the same underlying denial reason that petitioner refused to verify his self-employment income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
████████████████████

Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703

By: Joanne Ator, ES Manager

Door County Department of Social Services
Door County Government Center
421 Nebraska Street
Sturgeon Bay, WI 54235-0670

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Door County who resides in his father's home in [REDACTED], WI.
2. Petitioner submitted a paper application for energy assistance (EA) benefits in October 2012. During the prior twelve months, petitioner grew vegetables and sold them at farmer's markets for payment.
3. Petitioner listed zero in income on his energy assistance (EA) application.
4. The agency representative called petitioner to inquire of any income. Petitioner informed the agency representative that his only income came from selling vegetables and some personal items.
5. Petitioner was enrolled in the Energy Assistance (EA) program and received benefits.
6. In November, 2012, the agency reviewed the application and determined that it needed verification of petitioner's income as it was deemed to be income from self-employment rather than zero income as reported by petitioner.
7. The county agency sent a letter by e-mail to petitioner asking for him to complete self-employment income report forms (SEIRFs) for his income. The representative attached to the e-mail a blank SEIRF form for petitioner to use. Petitioner received that e-mail.
8. Petitioner refused to submit the requested SEIRF or any income verification.
9. The agency has asked petitioner to re-apply for benefits with the income information they need. Petitioner continues to refuse to provide the income verification.
10. The petitioner re-applied for energy assistance benefits on April 28, 2013.
11. The county agency sent a June 5, 2013 denial notice to the petitioner's indicating that his re-application for EA benefits was denied for the same reason it denied his October, 2012 EA application (refusal to verify his self-employment income). See Exhibit 2.

DISCUSSION

In petitioner's prior energy assistance appeal in ENE/146192, ALJ Tedesco concluded in his February 5, 2013 decision that: "The county agency correctly terminated benefits because he failed to provide the requested verification of income." During the September 18, 2013 hearing, ES Manager Joanne Ator and WHEAP worker Gina Wautier (GW) both convincingly argued that this appeal is the second time that petitioner is appealing the same issue (whether he refused to verify his self-employment income), and that such issue was already addressed in petitioner's prior final decision in ENE/146192.

In the Discussion Section of his final decision in ENE/146192 (issued February 5, 2013), ALJ Tedesco provided the following thorough analysis of the correctness of the county agency's termination of petitioner's energy assistance benefits. This analysis is directly relevant and applicable to petitioner's instant appeal in ENE/150811:

Energy Assistance is a state-run program established by federal law. *See* 42 USC § 8621, et seq. and Wis. Stat. § 16.385. Rules for the program must follow Wisconsin statutes, but where the statutes are silent the Department of Administration may set policies. Eligibility depends upon a household's income not exceeding 60% of the state average. . . . Unless the applicant is a seasonal worker, financial eligibility is based upon the household's gross income during the three months before the application date. *Id.*, pp. 2-13 and 2-16. **Applicants must verify the income of everyone in the household for those three months.** *Id.*, p.3.19. If self-employed, applicants must provide 12 months of income verification. *See* p. 2-16. In addition, applicants must verify other essential information. *Id.* p.3.6. **If an applicant fails to complete an application within 30 days, the agency must deny it** and the applicant must reapply. *Id.*, p.3.3.

Petitioner concedes that he received the request for the income verification. He also concedes that he never attempted to verify his income or send back the form because he disputes that it is self-employment income. His argument is that his selling of vegetables that he grows at farmer's markets results in such a limited income that it should not be considered self-employment. This argument is not persuasive. Petitioner grew vegetables and sold them at a farmer's market. He earned money from the sale. It does not matter how much it was. Income must be reported by one seeking to get public benefits. The *Manual* designates self-employment income as that including farm income. Growing vegetables and selling those vegetables for money seems to me to be farm income. The *Manual* at section 2.3.5 does not include a requirement that the income be from an incorporated entity or that it reach a minimum amount in a given year. Income from farming is self-employment income. Petitioner would prefer the agency to simply pretend that it does not exist because he made only a limited amount. But, petitioner cannot provide a source for such a rule.

Petitioner also argues that he does not remember how much he made and any representation would be false. But, this is not the fault of the agency. If petitioner seeks public benefits then he cannot be expected to be excused from the rules of the program. In this case, he did not even attempt to provide any verification. Based on this, I find that the county agency correctly terminated petitioner's benefits due to his failure to provide any verification of income.

(Emphasis added).

During the September 18, 2013 hearing, the fundamental underlying issue remains the same: that petitioner continues to refuse to verify any income he may have from his self-employment sale of vegetables at a farmer's markets. During the hearing and in his submissions to DHA, petitioner asserts various complaints against the county agency and arguments for why he is being treated unfairly, or the county agency is incorrectly following policy to require self-employment forms or any other verification of his income. Petitioner also makes insulting remarks against the prior ALJ, this ALJ and county agency representatives. Such comments are entirely inappropriate and result in an unnecessary combative attitude between petitioner and the county agency. During the hearing petitioner unconvincingly alleged that he has no income whatsoever. However, there was sufficient credible testimony and evidence during the September 18, 2013 hearing (and the hearing record of the previous January 30, 2013 hearing) to establish that petitioner did have some amount of income from his sale of vegetables at farmer markets.

Even during the September 18, 2013 hearing, petitioner at one point admitted that he might have sold a few hundred dollars last summer – but claimed such sales were “not a business.” The county agency responded that the receipt of self-employment income did not mean that he operated a “business” but only that he received income. Petitioner then argued his income should be “ignored” under section 2.3.8, but that section applies to income from assets, not self-employment income, and thus does not apply to this case. Petitioner then alleged that his income should be ignored as “in-kind” income under section 2.3.8. However, the county responded correctly that his self-employment income was not “in-kind” income because it was not a non-cash item (i.e. meals, clothing) donated to him by a third party. The petitioner was simply searching for some basis to exclude his self-employment income from counting in his EA application process or to provide a justification for his refusal to verify his income.

Mr. ██████ asserted one questionable argument (or interpretation of policy) after another as to why the county agency was allegedly incorrect in its denial action. He was unable to establish any error in the county agency’s denial determination. Furthermore, petitioner’s credibility was highly questionable as his testimony was inconsistent and contradictory during the September 18, 2013 hearing, and inconsistent and contradictory in the hearing record from his prior case, ENE/146192. Despite Mr. ██████’s unnecessarily combative attitude during the hearing, ES Manager Ator in exasperation stated that the county agency would accept any type of written verification of his income, and then be able to process his EA application and issue appropriate EA benefits to petitioner. In fact, the ES Manager indicated the county agency would even accept a written statement from petitioner which stated “zero income.” Despite this clear, reasonable offer, petitioner refused to submit any verification whatsoever even if any written verification would be sufficient for the determination of his energy assistance benefits to be completed and then likely issued. It appears that the petitioner does not want to resolve this case, but instead wants to fight with the county agency and insult any party that does not agree with him.

The county agency argued that the current appeal is the same underlying issue that this petitioner brought forth in his appeal filed December, 2012 in ENE/146192 before Judge Tedesco. In its summary the county agency stated in pertinent part: “In that appeal Mr. ██████ refused to complete a self-employment form for 2012. He had stated that he sold vegetables at a farm market during the late summer, but refused to disclose this income. He stated that he believes this amount was insignificant and a waste of his time to fill out the form.”

The county agency is basically arguing Claim preclusion in the instant appeal. Claim preclusion (formerly known as “res judicata”) requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as “collateral estoppel”) requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, “a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand.” *Ibid.*, p. 550.

In this current case of ENE/150811, this action is between the same parties and regards the same issue (denial of EA due to petitioner’s refusal to verify self-employment income) ENE/146192. In addition, a final administrative decision was issued in ENE/146192 by Judge Tedesco on the same issue as the instant appeal. The petitioner disagreed with the prior decision in that case, but did not appeal that decision to circuit court or request a rehearing. Instead, petitioner has decided to pursue this current appeal which is basically the same case but with a later application date of April, 2013. The petitioner has offered some new arguments in this appeal, but the fundamental issue in this case has not changed from his prior energy assistance case: whether the county agency correctly denied his energy assistance due to refusal to verify his self-employment income. As a result, the instant appeal claim is precluded by

that result, under both the doctrines of claim preclusion and issue preclusion. Rather, the instant claim is exactly what the doctrines prohibit; a vexatious, repetitive and needless claim. This matter has been decided in a final decision, and that result is binding as a matter of fact and law. In short, the petitioner had his opportunity to be heard in the prior hearing and decision, and he lost.

CONCLUSIONS OF LAW

1. The county agency correctly denied the petitioner's second April, 28, 2013 energy assistance application for the same reasons the county denied petitioner's October, 2012 EA application in the prior final decision in ENE/146192.
2. The doctrine of claim and issue preclusion applies to the petitioner's April, 2013 energy assistance denial because his current appeal addresses fundamentally the same denial reason that petitioner refused to verify any self-employment income, as the prior final decision in ENE/146192, and thus there is not jurisdiction to further address the merits of this case.

THEREFORE, it is

ORDERED

The petition for review herein be and the same 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 Administration. 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: 101 East 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 November, 2013

\sGary M. Wolkstein
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 November 20, 2013.

Door County Department of Social Services
DOA - Energy Assistance