



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/151049

PRELIMINARY RECITALS

Pursuant to a petition filed July 31, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on August 27, 2013, at Racine, Wisconsin.

The issue for determination is whether the agency correctly discontinued Petitioner's FoodShare eligibility because of income in excess of FoodShare gross income 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: Kathy Christman

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County. Petitioner's FoodShare household size is 2; himself and his son.
2. Petitioner was notified via a Notice of Decision dated July 1, 2013 that his FoodShare benefits would be discontinued effective August 1, 2013 as his income was over FoodShare gross and net income limits.

3. The agency noted in a routine wage cross match that Petitioner might have more income than the agency was budgeting for the purpose of determining FoodShare eligibility. It sought verification from Petitioner of income.
4. Petitioner's son receives Social Security benefits in the amount of \$780.00 per month.
5. Petitioner owns and operates a small business. On a June 24, 2013 Employer Verification of Earnings he reported paying himself a wage of \$200-300 per week on an irregular basis. On self-employment report forms he indicated net income of \$1130.33 over a three month period. These forms were, however, from June, July and August 2012.
6. The agency added the Social Security of \$780.00, the self-employment of \$1130.33 and \$250 a week in wages or \$1075.00 per month (\$250.00 x 4.3 weeks per month) to arrive at gross income of \$2985.33 per month. This included \$185 per month of depreciation that was added back to Petitioner's income.
7. The FoodShare gross income limit for a group of 2 is \$2522.00. *See FoodShare Wisconsin Handbook, §8.1.1.1.*

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

Once a household passes the gross income test the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$149 per month for a household of 1-3 persons, *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction - the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).* There is a cap of \$459.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.1 and 8.1.3.*

As Petitioner owns a small business, the treatment of depreciation is also important here. It is not an allowed expense for FoodShare purposes and must be added back to income. *FSH, §4.3.3.5.3.*

Petitioner argues that whatever he makes in net income from the business is reinvested so he is not earning the amount determined by the agency. Nonetheless, net income from a business is added to household income. *Again, see generally, FSH, §4.3.3.5.3 and §8.2.1, Form #s F16037 or F-00107.* Petitioner has not provided information that rebuts the agency determination of income described above. Perhaps if he has 2012 taxes completed by the time of this decision and completes new self-employment forms he may reapply and be able to demonstrate that his income has fallen below FoodShare gross income limits - though he will still need to be below net income limits (the calculation of which is outlined above) to qualify for FoodShare.

CONCLUSIONS OF LAW

That the available evidence indicates that the agency correctly discontinued Petitioner's FoodShare eligibility because his FoodShare household income in excess of FoodShare gross income limits.

THEREFORE, it is

ORDERED

That this appeal 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 Milwaukee,
Wisconsin, this 23rd day of September, 2013

\sDavid D. Fleming
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 23, 2013.

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