



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/152202

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 19, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on October 23, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in its termination of FS benefits to petitioner effective October 1, 2013.

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: Jose Silvestre  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was a recipient of FoodShare and medical assistance benefits.
3. In July, the agency began a fraud investigation based on a belief that income was being underreported.

4. On July 5, 2013, the agency received Employer Verification from [REDACTED] [REDACTED] [REDACTED] which indicated 36 to 40 hours per week at \$15.00 per hour for petitioner. The agency budgeted \$2,451.00 earned income to petitioner from this employer.
5. On August 16, 2013, the agency received an Employer Verification from [REDACTED] indicating that petitioner's wife was terminated in June but had been earning 9 dollars per hour at 40 hours per week.
6. At the time of the review, petitioner's wife was collecting unemployment of \$739.60.
7. The agency determined that the household was over the net income limit for FS and terminated enrollment effective October 1, 2013.
8. Petitioner filed an appeal.

### DISCUSSION

In determining the amount of FS to be issued each month, the county must budget **all** earned and **unearned income of the FS household**. 7 C.F.R. §273.9(b). This includes child support, Supplemental Security Income (SSI), SSDI, child support, and W-2 payments received by household members. FoodShare Wisconsin Handbook, Appendix section 4.3.1.

FS benefits are calculated pursuant to 7 C.F.R. § 273.9. The maximum FS allotment amounts, based on household size, are listed at FoodShare Wisconsin Handbook, Appendix 8.1. In general, a household must *initially* pass the so-called "**gross income limit**". The FS eligibility calculation process allows for certain deductions from gross income to arrive at a "**net income**" then tested against a "**net income limit**". But this process only occurs if the household *first* passes the gross income test. If the applying household does not pass the gross income test, then the net income test, and the applicable deductions, are not even reached.

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which was, at the relevant time of the agency action, \$163 per month for a four person household. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FoodShare Wisconsin Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FoodShare Wisconsin Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FoodShare Wisconsin Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FoodShare Wisconsin Handbook, App. 4.6.7.

Petitioner did not dispute the income asserted by the Department. The gross income limit for a household of one is \$3,926. See *FS Handbook* §§ 4.2.1, 8.1.1. The household income is below that number. The following deductions were then taken by the agency: earned income deduction of \$490.20, standard deduction of \$163. This results in a net income of \$2,537 which exceeds the net income limit of \$1,963 and results in ineligibility for a FS allotment. See *FoodShare Handbook* § 8.1.2. If petitioner's income fluctuates and goes lower, he may wish to reapply as he may become eligible.

### CONCLUSIONS OF LAW

The Department did not err in terminating petitioner's FS due to income.

**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 Madison,  
Wisconsin, this 14th day of November, 2013

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\sJohn P. Tedesco  
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 14, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability