



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152926

PRELIMINARY RECITALS

Pursuant to a petition filed October 17, 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 hearing was held on December 18, 2013, at Alma, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner is ineligible for FoodShare.

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, Room 651
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:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Buffalo County.
2. The county agency reviewed the petitioner's FoodShare renewal on September 10, 2013. It ended his benefits because his income exceeded the program's limit.

3. The petitioner runs a farm. His gross income according to his 2012 federal income tax return was \$207,487, including \$53,389 from the sale of livestock. His business expenses were \$189,129, including \$940 in depreciation.
4. The petitioner receives \$718 and his wife receives \$296 per month in social security. They also receive \$23.50 in interest income each month.
5. For a two-person household, 200% of the federal poverty level is \$2,586 per month. *FoodShare Wisconsin Handbook*, § 8.1.1.

DISCUSSION

Wisconsin FoodShare policy states that “[m]ost FoodShare groups are considered categorically eligible if their gross income is at or below 200%” of the federal poverty level. *FoodShare Wisconsin Handbook*, § 4.2.1.1. The only exceptions to this rule are for those with felony drug convictions or who have been found to have committed an intentional policy violation of the program. *Id.* For a two-person household, the size of the petitioner’s, 200% of the federal poverty level is \$2,586 per month. *FoodShare Wisconsin Handbook*, § 8.1.1. Household income includes all income from any source unless FoodShare regulations specifically exclude it. 7 CFR § 273.9(b). Self-employment income must be averaged “over the period the income is intended to cover...” 7 CFR § 273.11(a)(1)(i). The petitioner’s household sole source of earned income comes from farming, which varies from month to month, so it must be averaged over the entire year. When determining income for FoodShare benefits, agencies must add depreciation back in. *See* 7 CFR § 273.11(b)(2)(iii).

The county agency used the petitioner’s 2012 federal tax return to determine his earned income. His return indicated that his gross that year was \$207,487, including \$53,389 from the sale of livestock, and that his business expenses were \$189,129, including \$940 in depreciation. This gave him \$19,298, or \$1,608.17 per month, in countable gross income. In addition, he receives \$718 and his wife receives \$296 per month in social security; they also receive \$23.50 in interest income each month. This puts their total monthly gross income at \$2,855.47, which exceeds 200% of the federal poverty level.

The petitioner contends that the agency overstates his earned income because he used much of it to pay off loans, which left him with less to pay for food, and he sold cattle, which inflated his income. FoodShare regulations do not exclude money used to repay loans from income, so any money used for that purpose remains countable when determining FoodShare benefits. Agencies can use means other than tax returns to determine income if the recipient can show that these returns do not accurately portray his current income. The petitioner has not done this. Although he sold cattle in 2012, there is no evidence that he would not also do this in 2013. Nor does his documentation or testimony suggest some alternative income figure. He has the burden of proving by the preponderance of the credible evidence that he is eligible for FoodShare. He cannot meet this burden without providing evidence that the 2012 federal income tax return used by the county agency inaccurately portrays his income. Therefore, I find that the county agency correctly determined that he is ineligible for FoodShare because his gross household income exceeds 200% of the federal poverty level.

CONCLUSIONS OF LAW

The county agency correctly determined that the petitioner is ineligible for FoodShare because his gross income exceeds the program’s limit.

THEREFORE, it is

ORDERED

The petitioner's 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, Room 651, 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 13th day of January, 2014

\sMichael D. O'Brien
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 January 13, 2014.

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