



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/153266

PRELIMINARY RECITALS

Pursuant to a petition filed October 31, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Walworth County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on December 23, 2013, at Elkhorn, Wisconsin. At the request of the parties, the record was held open for the county agency to send a reconsideration summary to DHA and petitioner. ES Supervisor Wicklund sent a reconsideration summary to DHA and petitioner on January 2, 2014 which is received into the hearing record. The petitioner did not submit any response to DHA.

The issue for determination is whether the county agency correctly discontinued the petitioner's FoodShare (FS) benefits effective December 1, 2013, due to household income above the FS net income eligibility limits for a FS group of three.

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: Carol Wicklund, ES Supervisor
Walworth County Department of Human Services
W4051 County Rd NN
Elkhorn, WI 53121-1006

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County who resided in a household of one.
2. The petitioner received FoodShare (FS) benefits for a household of one for the period of February 12, 2013 to November 30, 2013.
3. On October 25, 2013, petitioner reported to the county agency that she and [REDACTED] were married and have a child in common. [REDACTED]'s earned income had previously not been counted regarding petitioner's FS income eligibility.
4. The county agency reviewed petitioner's FS group of three, and verified [REDACTED]'s earned income and updated the status of petitioner's FS eligibility.
5. [REDACTED] is employed at [REDACTED] [REDACTED] [REDACTED] and earns \$17.75 per hour working 40 hours per week. His earned income is \$1,364.80 every other week.
6. The petitioner applied for MA disability, but the Disability Determination Bureau (DDB) denied petitioner's disability application. Petitioner has appealed that MA disability denial, but no decision has yet been issued regarding that appeal.
7. The county agency sent an October 28, 2013 Notice of Decision to the petitioner stating that her FS benefits would discontinue effective December 1, 2013, due to net household income of \$2,290.40 which was above the FS net income limit of \$1,628.00 for a FS household of three.

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.

The gross income limit test does not apply to households with elderly or disabled members. FoodShare Wisconsin Handbook. "Disabled" means that the applicant is receiving one of the following: Supplemental Security Income (SSI) or Disability Insurance Benefits (DIB) from the Social Security Administration; interim assistance pending a SSI or DIB application from the Social Security Administration; SSI-State Supplement benefits from the State in which he or she resides; Veteran's Administration benefits of certain types; retired federal workers receiving disability payments; and railroad workers receiving an annuity under the Railroad Retirement Act of 1974. See, 7, C.F.R. § 271.2 *Definitions. Elderly or disabled member*, at §§ (1-11); see also, 7 C.F.R. § 273.9(d)(3). ("Elderly" means 60 years old or older.) *Ibid*.

In this case, petitioner is not elderly or determined disabled, and therefore the gross income limit test does apply to her. However, the petitioner's gross household income was not above the gross income eligibility limit for a FS household of three.

During the December 23, 2013 hearing and in her January 2, 2013 reconsideration, ES Supervisor Carol Wicklund presented a well-organized and well documented case to establish that the county agency correctly discontinued the petitioner's FoodShare (FS) benefits effective December 1, 2013, due to net household income above the FS income eligibility limits for a group of three. The petitioner alleged that she should be eligible for a medical expense deduction in the calculation of her FS income eligibility. However, such medical expense deduction is only available if petitioner had already been determined "disabled" by DDB or petitioner is determined "disabled" in her appeal. As of the December 23, 2013 hearing date, DDB has denied petitioner's disability application and no decision has been issue in her disability appeal. See Finding of Fact #6.

In this case, the petitioner was unable to present any reliable evidence to refute the county agency's case that it correctly calculated the petitioner's household's net income for a group of three. The county agency correctly determined that petitioner's household's income for a FS group of three did not pass the net income test. The petitioner was unable to refute that her net household income of \$2,290.40 was above the FS net income limit of \$1,628.00 for a FS household of three. Accordingly, based upon the above, I must conclude that the county agency correctly discontinued the petitioner's FoodShare (FS) benefits effective December 1, 2013, due to household income above the FS net income eligibility limits for a FS group of three.

As dicta, if petitioner is found disabled by DDB or in her appeal, she should promptly contact the county agency to request a re-determination of her FS income eligibility with any applicable medical expense deduction.

CONCLUSIONS OF LAW

The county agency correctly discontinued the petitioner's FoodShare (FS) benefits effective December 1, 2013, due to household income above the FS net income eligibility limits for a FS group of three.

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 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 23rd day of January, 2014

\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 January 23, 2014.

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