



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

ENE/153294

PRELIMINARY RECITALS

Pursuant to a petition filed November 02, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Energy - Milwaukee County in regard to Energy Assistance, a hearing was held on February 25, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Social Development Commission (the agency) correctly denied Petitioner's application for Energy Assistance benefits.

NOTE: The record was held open to give the Petitioner an opportunity to submit documentation of her income. On February 26, 2014, Petitioner submitted documentation of her pension and Social Security Income. The fax has been marked as Exhibit 4 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703

By: Luella Ellis, Lead Processing Specialist, Energy Services Worker
Social Development Commission
4041 N. Richards St.
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On February 10, 2011, the Petitioner applied for and received energy assistance for the 2011/2012 heating season. (Testimony of Ms. Ellis)
3. On August 21, 2012, the Petitioner applied for and received energy assistance for the 2012/2013 heating season. (Testimony of Ms. Ellis; Exhibit 3, pgs. 6 and 7)
4. In calculating Petitioner's income for the 2011/2012 and 2012/2013 heating seasons, the agency did not count her pension, even though Petitioner had been receiving the income since 2009. (Testimony of Ms. Ellis; Testimony of Petitioner; Exhibit 3, pgs. 6 and 7)
5. On August 19, 2013, the Petitioner applied for energy assistance for the 2013/2014 heating season. (Testimony of Ms. Ellis; Testimony of Petitioner; Exhibit 3, pgs. 3 and 4)
6. On September 24, 2013, the agency sent Petitioner a notice indicating that her application for benefits was denied. (Exhibit 1, pg. 2)
7. In calculating Petitioner's income for the 2013/2014 heating season, the agency included Petitioner's pension with her social security income. (Testimony of Ms. Ellis; Exhibit 3, pgs. 3 and 4)
8. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 2, 2013. (Exhibit 1)
9. Petitioner received income from a pension in the amount of \$341.34 per month, gross. (Exhibit 4, pg. 2; Exhibit 3, pg. 4)
10. Petitioner also received income from Social Security. Her current, gross benefit amount is \$900.30, which reflects a 1.5 percent cost of living increase. (Exhibit 4, pg. 4) The agency counted \$781.00 of this income. (Exhibit 3, pg. 4)
11. Petitioner's husband also received income from Social Security. His current gross benefit amount is \$1,940.90, which reflects a 1.5 percent cost of living increase. (Exhibit 4, pg. 9) The agency counted \$1,808.00 of this income. (Exhibit 3, pg. 4)

DISCUSSION

In order to be eligible for the Wisconsin Heating and Energy Assistance Program (WHEAP) a household must have gross income at or below 60% of the median income in Wisconsin. *WHEAP Manual §2.3.1*

All gross household income must be counted. *WHEAP Manual §2.3.2* Income from pensions and social security must be counted when calculating household income. *WHEAP Manual §2.3.7*

The Petitioner provided a monthly budget, listing her expenses. (See Exhibit 2) No deductions or disregards from income are allowed, unless specifically listed in §2.3.8 of the WHEAP Manual. *WHEAP Manual §2.3.2* Unfortunately, none of the expenses listed in Exhibit 2 are

allowable as deduction under WHEAP Manual §2.3.2. It should be noted, however, that Medicare part B premiums may be deducted when calculating household income. *Id.*

In 2013, the median income in Wisconsin for a household of two was \$57,479, annually or \$4,789.92 per month.

See http://www.justice.gov/ust/eo/bapcpa/20121101/bci_data/median_income_table.htm

60% of \$4789.92 is \$2873.95.

The agency calculated Petitioner's monthly income, using SSI benefit amounts that were less than what Petitioner actually began receiving in January 2014. (Exhibits 3 and 4) This may be likely due to the fact that a cost of living adjustment was made to Petitioner's benefits in January 2014 and because Medicare B premiums are deducted from counted income pursuant to *WHEAP Manual §2.3.8*

The agency calculated Petitioner's income as follows:

\$781.00 – Petitioner's SSI Income
 +\$341.34 – Petitioner's Pension
 +\$1808.00 – Petitioner's spouse's SSI income

\$2930.34 Total Gross Household Income

\$2930.34 is more than the 60% of Median Income, income limit of \$2873.95 for a household of two. Consequently, Petitioner is not financially eligible for energy assistance benefits.

There are circumstances where a person can be determined to be categorically eligible even if he/she is over the income limit. *WHEAP Manual §2.3.1* For a household to be determined as categorically eligible

every household member must be a recipient, for each of the three preceding months, of either:

1. W-2/TANF (Wisconsin Works/Temporary Assistance for Needy Families)
2. FoodShare when there is a cash grant; NOT State Option FoodShare, or
3. Social Security Supplemental Income, including Care Taker Supplement Income. (Receipt of regular Social Security benefits or Social Security Disability Insurance (SSDI) may not be used to establish categorical eligibility.

Id.

Regrettably, it does not appear as though the Petitioner's household falls into any of these categories. As such, Petitioner is not eligible for energy assistance for the 2013/2014 heating season.

NOTE: The WHEAP Manual may be viewed on-line at:

<http://homeenergyplus.wi.gov/docview.asp?docid=23560&locid=25>

CONCLUSIONS OF LAW

The agency correctly determined that Petitioner was not eligible for energy assistance benefits.

THEREFORE, it is ORDERED

That the petition 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

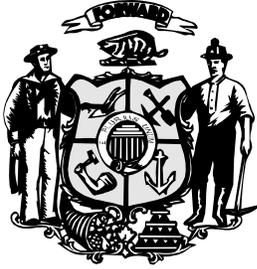
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of 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 Milwaukee,
Wisconsin, this 7th day of March, 2014.

\sMayumi M. Ishii
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 March 7, 2014.

Energy - Milwaukee County
DOA - Energy Assistance