



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/153889

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 02, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services in regard to FoodShare benefits (FS), a telephonic hearing was held on January 13, 2014, at Fond Du Lac, Wisconsin. At the request of the parties, the record was held open for two weeks for the submission of closing arguments with documentation to DHA with copies to each party. Both parties timely submitted their closing argument to DHA which are received in to the hearing record.

The issue for determination is whether the county agency correctly denied the petitioner's September, 2013 FoodShare (FS) application due to household income above the FS net income limit for a household 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: Deb Bohlman, ESS

Fond Du Lac County Department of Social Services  
87 Vincent Street  
Fond Du Lac, WI 54935-4595

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County who resides with her two children.
2. The petitioner submitted an Access application for FoodShare (FS) benefits on September 13, 2013 for her household of three.
3. During her October 3, 2013 FS interview, petitioner reported that she earned \$13.60 per hour at [REDACTED] and was working 40 hours per week. The petitioner had gross earned income of \$2,339.20 (40 hours X \$13.60 per hour X 4.3 weeks) for FS eligibility and benefits purposes.
4. The petitioner received an average of \$500.30 in total child monthly support payments for both of her two children for the three months of July, August and September, 2013.
5. The petitioner's gross income during September, 2013 was \$2,839.50. Petitioner's net household income was \$2,222.66 during September, 2013.
6. The county agency sent an October 5, 2013 Notice of Decision to the petitioner stating that petitioner's September, 2013 FS application was denied due to net income of \$2,222.66 was above the net FS income limit of \$1,591 for September, 2013 or her net income of \$2,219.66 for October, 2013 was above the increased net income limit of \$1,628 as of October, 2013 for a FS group 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 January 13, 2014 hearing and in her January 23, 2014 reconsideration with attachments, ESS Deb Bohlman presented a well-organized and well documented case to establish that the county agency correctly denied the petitioner's September, 2013 FoodShare (FS) application, due to net household income above the FS income eligibility limits for a group of three. The petitioner alleged that the county

agency was inaccurately counting her child support payment for her two children. However, ESS Bohlman in her reconsideration and additional child support documentation established that the county was correctly counting an average monthly total of \$500.30 in child support. In any case, even if the petitioners' child support figures were used of monthly total child support averaging \$458.53, the petitioner's total household income would still be substantially above the FS net income limit.

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 for September or October, 2013.. The petitioner was unable to refute that her net household income of \$2,222.66 was above the net FS income limit of \$1,591 for September, 2013 or the net income of \$2,219.66 was above the net income limit of \$1,628.00 for October, 2013 for a FS household of three. Accordingly, based upon the above, I must conclude that the county agency correctly denied the petitioner's September, 2013 FoodShare (FS) application due to household income above the FS net income limit for a household of three.

### **CONCLUSIONS OF LAW**

The county agency correctly denied the petitioner's September, 2013 FoodShare (FS) application due to household income above the FS net income limit for a household 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 11th day of February, 2014

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\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 February 11, 2014.

Fond Du Lac County Department of Social Services  
Division of Health Care Access and Accountability