



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/154016

PRELIMINARY RECITALS

Pursuant to a petition filed December 05, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Manitowoc County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 21, 2014, at Manitowoc, Wisconsin.

The issue for determination is whether the county correctly budgeted income for petitioner's family.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Sheryl McNamara
Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Manitowoc County.
2. Petitioner resides with her husband and four children. Petitioner's husband is a Lawful Permanent Resident of the United States. Petitioner's husband has not been a Permanent Residence for five years since his date of entry into the United States; thus he is ineligible for FS.
3. The county denied FS because household income was over the limit.

DISCUSSION

Prior to August, 1996, a legal alien could receive FS. See, for example, FS Handbook, § 4.2.0 (1-1-94). However, federal law changed so that now a "qualified alien" (of which petitioner is one) is not allowed to receive FS unless he fits into a specifically stated exception. FS Handbook, § 3.12.1.1. There is no evidence that petitioner's husband fits into any of these exceptions.

However, just because a non-citizen is ineligible for FS does not mean that his income cannot be counted for FS purposes for the remaining members of his family who are eligible for FS. The FS Handbook § 4.7.3, provides that the income of an ineligible family member may be deemed to the family members who are eligible. The income is deemed by taking the ineligible member's income, dividing by total household members, subtracting 20%, then multiplying by the number of eligible household members. Handbook, § 4.5.5.1.

Petitioner's husband's income was \$370 per week, and the monthly total would be that amount times 4.3 (4.3 because there are slightly more than 4 weeks in a month). His income thus would be \$1,591. 20% of that income is \$318.20, which results in petitioner's husband's net income of \$1,272.80. That amount would be divided by 6 (total members of household) and then multiplied by 5 (FS eligible household members). Thus \$1060.66 of petitioner's husband's income is deemed to the five FS household members. When added to petitioner's income and child support, the total gross monthly income is \$3,233.23. After allowable deductions, petitioner's net monthly household income is \$2,726.30. This exceeds the FS net income limit of \$2,298.00 for a household of five. FS Handbook, § 8.1.1.

I must conclude, therefore, that the county correctly denied FS based upon the household income when petitioner applied.

CONCLUSIONS OF LAW

The county correctly deemed petitioner's husband's income to the eligible family members, and as a result net income was over the FS limit.

NOW, THEREFORE, it is **ORDERED**

That 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 30th day of January, 2014.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 30, 2014.

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