



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/154061

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 09, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on February 18, 2014, at Green Bay, Wisconsin. Petitioner failed to appear for a previously scheduled hearing on January 22, 2013, and the matter was dismissed as abandoned. Petitioner subsequently requested a rehearing, which was granted.

The issue for determination is whether the county agency correctly reduced the petitioner's FoodShare (FS) benefits effective January 1, 2014.

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: Ashley Johnson

Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. On April 2, 2008, petitioner was sent a letter of adverse action informing him that his FS benefits would be decreased from \$189.00 to \$153.00 beginning January 1, 2014 based on his earnings reported. Exhibit 3.
3. Petitioner reported self-employment income for 2013; no self-employment income was reported for 2012.

### **DISCUSSION**

In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned income. 7 C.F.R. § 273.9(b). From the gross household income, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6 are allowed: (1) standard deduction; (2) earned income deduction - which equals 20% of the household's total earned income; (3) medical expense deduction – for medical expenses exceeding \$35 in a month for an elderly or disabled person; (4) dependent care deduction for child care expenses; and (5) shelter expenses deduction - the deduction is equal to the excess expense above 50% of net income remaining after other deductions. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wi.gov/fsh/>.

In addition, it is a well-established principle that a moving party generally has the burden of proof, especially in an administrative proceeding. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs.

I find the agency met its burden in showing that it appropriately determined petitioner's self-employment income. Federal regulations provide that self-employment income be included as earned income for purposes of FS eligibility and benefit levels. 7 CFR §273.9(b)(1)(ii). As self-employment income may fluctuate from month to month, it is averaged over the period the income it is intended to cover, 7 CFR §273.11(a)(1). Furthermore, the *FS Handbook* specifically directs the agency to determine a monthly income figure for self-employed individuals by averaging the income over a 12 month period. *FS Handbook* s. 4.3.3.5. I have reviewed the respondent's calculations, and have found no error.

The petitioner argued that he earned less in 2013 than he did in 2012; however, the respondent noted that the petitioner did not report any self-employment income in 2012. It was the addition of the newly reported self-employment income that led to the reduction in FS benefits.

### **CONCLUSIONS OF LAW**

The county agency correctly determined petitioner's FS allotment.

**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 28th day of February, 2014

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\sPeter McCombs  
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 28, 2014.

Brown County Human Services  
Division of Health Care Access and Accountability