



FH

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

ENE/154535

PRELIMINARY RECITALS

Pursuant to a petition filed January 4, 2014, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Clark County Department of Social Services ["County"] in regard to Energy Assistance ["EA"], a Hearing was held via telephone on April 24, 2014. At petitioner's request Hearings scheduled for March 25, 2014 and February 25, 2014 were rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following related matter concerning the same petitioner: MGE-154533.

The issue for determination is whether it was correct to deny petitioner's application for WHEAP.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703

By: Tom Miller, ES Supervisor
Marianne Guntner, ES Supervisor
Clark County Department of Social Services
Courthouse
517 Court Street, Rm. 502
Neillsville, WI 54456-0190

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 51 years old) is a resident of Clark County, Wisconsin.
2. Petitioner applied for EA.
3. Petitioner is in an EA household group of 1-person (herself).
4. Petitioner's income was over the EA income limit for all times relevant to this *Decision*; her net income was in excess of \$2,400 per month (including earned income from [REDACTED], [REDACTED], Social Security, and Social Security Disability Income ["SSDI"]) for all times relevant to this *Decision*.
5. Petitioner is not (and was not during the relevant time period) a recipient of Wisconsin Works ["W-2"/TANF, Food Stamps ["FS"], or Supplemental Security Income. ["SSI"].
6. The County denied petitioner's application for EA because she was over the EA income limit.

DISCUSSION

The EA income test is based on sixty percent (60%) of the State Median Income ["SMI"] level. If the household's gross income is less than or equal to the income limit for its size, the household passes the income test. If the gross income exceeds the limit, the household is not eligible (unless categorical eligibility criteria are met¹). *Wisconsin Home Energy Assistance Program -- Program & Operations Manual* ["WHEAP Manual"], *Program Eligibility* (Chapter 2), page 2.3.1. (August 2013); See also, Wis. Stat. § 16.27(5) (2011-12).

The test period is the time frame during which income is counted to determine eligibility. The time frame can vary by income type. For most individuals with wages, government benefits, and regular income, the test period is based on gross income received during the three months prior to the date of the application. For income received from interest, dividends, tribal per capita payments, seasonal work, and self-generated income, the test period is based on the gross amounts received during the twelve months prior to the date of the application, or the previous tax year. WHEAP Manual 2.3.2.1.

¹ Categorical eligibility status will allow a household to pass the income test if they are above the 60% SMI level. For a household to be determined as categorically eligible every household member must be a recipient of W-2/TANF, FS, or SSI for each of the preceding three months. W-2 is considered categorical eligibility criteria only if there is a "cash benefit." If some, but not all, of the household members (including ineligible non-citizens) are recipients of W-2/TANF, FS, or SSI for each of the preceding three months, the household is not categorically eligible. WHEAP Manual 2.3.1.2.

Count all gross income received by all household members on the date of application for the appropriate test period. There are specific instructions for self-employed, seasonal workers, and farmers. Do not count, or enter, earned income or unemployment compensation for minors under the age of 18 (or full-time high school students) at the time of the application. WHEAP Manual 2.3.2.2.

Allow no deductions from gross income for employment-related expenses, childcare, medical expenses, or for any other reason. Allow no deductions from gross income except as specifically identified in this chapter (i.e. child support payments; See, WHEAP Manual 2.3.3.2), or as part of the Ignored/Deducted Income Table (none of which apply here; See, WHEAP Manual 2.3.8). Garnishments removed from income are not an allowable deduction from income. Care must be taken to ensure the income counted is the total gross income amount for each pay period. WHEAP Manual 2.3.2.6.

Petitioner argues that her SSDI should not be counted as income. Certain types of income are disregarded -- but SSDI not one of the types of income that are disregarded. WHEAP Manual 2.3.7. & 2.3.8.

For a time period of three months, 60% of the SMI for a household of 1 for the 2013-2014 heating season is \$6,173.00. See, WHEAP web site at: <http://homeenergyplus.wi.gov/category.asp?linkcatid=239> . See also, Wis. Stat. § 16.27(6) (2011-12). Petitioner's 3-month income exceeds this amount. Petitioner's income for a period of three months is in excess of \$7,200. Furthermore, petitioner is not a recipient of W-2/TANF, FS, or SSI. Therefore, it was correct to deny petitioner's application for EA because petitioner was over the 3-month income limit.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to deny petitioner's application for EA.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the

Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Administration, 101 East Wilson Street, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of
Madison, Wisconsin, this 15th day of May,
2014

\sSean P. Maloney
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 May 15, 2014.

Clark County Department of Social Services
DOA - Energy Assistance