



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/154824

PRELIMINARY RECITALS

Pursuant to a petition filed January 13, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services – Wis. Rapids in regard to FoodShare benefits (FS), a hearing was held on February 18, 2014, by telephone.

The issues for determination are (1) whether petitioner's appeal was timely filed, (2) whether the Department correctly closed the petitioner's case effective October 1, 2013, for failure to submit required income verification, and (3) whether the household is ineligible for FS due to excess income.

There appeared at that time 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: Beulah Garcia, Resolution Coordinator
Northern Consortium

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Lincoln County.
2. Prior to October 2013, the petitioner had an ongoing FS case for three persons (self and 2 sons). The case was due for a periodic review in September 2013. On September 18, 2013, the

department issued written notice to the petitioner advising that her FS would be discontinued effective October 1, 2013, for failure to perform a review. *See*, Exhibit 1, Notice.

3. The petitioner belatedly filed in her review form (effectively, a new application) on October 14, 2013. The agency then requested earned income verification, which the petitioner did not provide to the Department. On November 19, 2013, the Department issued written notice to the petitioner advising that her case remained closed because she did not submit requested income verification. *See*, Exhibit 2, Notice.
4. On January 15, 2014, the petitioner submitted her earnings verification. The Department also had a state employer reported wage match (SWICA) for the petitioner's son, [REDACTED]. [REDACTED] turned age 18 in March 2013. Their combined income caused them to be over the gross income limit for a FS group of three persons. The Department declined to re-open FS for the petitioner at that time.
5. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on January 13, 2014.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within **90** days of the date of that action. 7 C.F.R. § 273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed *104* days after the date of the October 1, 2013, case closure. Thus, it was untimely, and no jurisdiction exists for considering the merits of the October 1 closure.

Jurisdiction is present to review the denial of her October 14 re-application, with a denial date of November 19, 2013. The Department correctly refused to re-open the petitioner's case at that time because she had not supplied requested income verification. An agency must request verification of earned income. *FS Wisconsin Handbook (Handbook)*, §§1.2.4.1- 1.2.4.3, at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. The agency must give the client at least 10 days (or the balance of the 30 day application processing period) to supply requested verification. *Handbook*, §1.2.1.2. The responsibility for supplying verification then rests on the recipient. *Id.*, §1.2.1.3. When requested income verification is not timely received, the agency may correctly deny an application or close a case undergoing review. *Id.*, §1.2.4.1; 7 C.F.R. §273.2(g)(3).

Finally, the petitioner re-contacted the agency to request FS in January and submitted her income verification on January 15, 2014. The household monthly income consisted of \$2,681 in gross earnings from the petitioner and her son [REDACTED], and \$200 in child support. The total income of \$2,881, after allowable FS deductions, resulted in FS net income of \$2,192.84. This exceeded the net income limit for 3 of \$1,628. *See*, Exhibit 5, FS budget. The petitioner did not refute the income figures or deductions used by the Department. Rather, she questioned the need to include [REDACTED]'s income, as he is putting his earnings in a college fund, and is not helping to pay for food. However, the federal rule requires inclusion of [REDACTED] and his income in the FS household:

(c) *Income exclusions.* Only the following items shall be excluded from household income and no other income shall be excluded:

...

(7) The earned income (as defined in paragraph (b)(1) of this section) of any household member who is under age 18, who is an elementary or secondary school student, and who

lives with a natural, adoptive, or stepparent or under the parental control of a household member other than a parent. ...

7 C.F.R. § 273.9(c)(7).

See, in accord, Wisconsin policy:

4.3.2.2 Disregarded Earned Income

" *Disregard* " means "do not count." When you are calculating the total amount of income a person has received, you should exempt or exclude any of the following kinds of income:

Disregard the following sources of income:

1. Wages withheld as a general practice by an employer (even if in violation of law) until actually received by the employee
2. Earned Income Tax Credit...
3. Earned income of any person 17 years or younger, who is a food unit member under parental control of an **adult** food unit member and is enrolled in an elementary, high school, technical school, or university. This includes GED classes, and home schools recognized or supervised by the state or local board of education. Disregard the income until the month following the month in which the person turns 18 years of age. These provisions apply to semester and vacation breaks provided the student plans to return to school following the break.

FSWH, § 4.3.2.2. Thus, the agency acted correctly here in declining to re-open the petitioner’s FS case.

CONCLUSIONS OF LAW

1. There is no jurisdiction to review the closure of the petitioner’s FS case on October 1, 2013, as the appeal is untimely.
2. The agency correctly denied the petitioner’s re-application for FS of October 14, 2013, due to failure to supply income verification.
3. The agency correctly determined that the petitioner’s household was ineligible for FS in January 2014, due to excess income.

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 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 12th day of March, 2014

\sNancy J. Gagnon
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 12, 2014.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability