



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/155260

PRELIMINARY RECITALS

Pursuant to a petition filed February 05, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 05, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly denied petitioner's November 12, 2013 FS application.

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: Jose Silvestre
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner applied for FS benefits on November 12, 2013.

3. Petitioner's gross income was \$2,499.38 at the time of the FS application; her FS counted income was \$1721.26. The FS counted income limit applicable to petitioner's FS application was \$1,628.00.

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. See 7 C.F.R. §273.9(b). From the gross household income, certain deductions as discussed in the *FoodShare Wisconsin Handbook*, §4.6 are allowed: (1) standard deduction - which currently is \$152 per month. 7 C.F.R. §273.9(d)(1); (2) earned income deduction - which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); (3) medical expense deduction - for medical expenses exceeding \$35 in a month for an elderly or disabled person. 7 C.F.R. §273.9(d)(3); (4) dependent care deduction for child care expenses. 7 C.F.R. §273.9(d)(4); and (5) shelter expenses deduction - the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5). The maximum FS allotment amounts, based on household size, are listed at *FoodShare Wisconsin Handbook*, §8.1.2. The *FoodShare Wisconsin Handbook* can be viewed online at <http://www.emhandbooks.wi.gov/fsh/>. Per the *FoodShare Wisconsin Handbook*, §8.1.1, the maximum counted income for petitioner's household is \$1,628.00.

The petitioner argues that the denial of her FS application was incorrect because she cannot afford food. She testified regarding her child care expenses and noted that she has not received FS benefits since October of 2013.¹

For administrative hearings, the standard of proof is preponderance of the evidence. The agency has the burden of proof to establish that the action it has taken was correct given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence of correct action. I find that the agency has met its burden of proof based on the record before me. I need to have something tangible from the petitioner in order to find that she has rebutted the agency's case. She did not provide such proof. Petitioner conceded that the respondent's income figures were correct, and based her arguments on the fact that her budget was tremendously strained by the lack of FS benefits. Unfortunately, Such arguments do not constitute grounds to overturn the respondent's FS application denial.

CONCLUSIONS OF LAW

1. The petitioner's counted monthly household income exceed FS program counted monthly income limits.
2. The county agency correctly denied the petitioner's FS application based on counted household income in excess of FS program limits.

THEREFORE, it is

ORDERED

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

¹ Petitioner stated at hearing that she also wanted to appeal the October FS discontinuance. Appeals of FS determinations must be filed within 90 days of the effective date of the appealed decision. 7 C.F.R., §273.15(g). 90 days following October 1, 2013, was December 30, 2013. That issue is therefore untimely, and as such, I have no jurisdiction to review the October FS discontinuance.

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 Health Services, 1 West Wilson Street, Room 651, 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 16th day of April, 2014

\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 April 16, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability