



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/155555

PRELIMINARY RECITALS

Pursuant to a petition filed February 12, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 15, 2014, at Black River Falls, Wisconsin.

The issue for determination is whether the income the petitioner is entitled to receive from a family limited liability corporation counts when determining her FoodShare eligibility.

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: Tom Miller

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Jackson County.
2. The petitioner lives alone.

3. The petitioner holds a one-seventh share with her siblings in a limited liability corporation that develops property. Her 2012 federal income tax return, the latest available, indicates that her share of the income from the corporation was \$18,910, or \$1,575.91 per month.
4. The petitioner receives \$967.90 in social security after her Medicare premium is added back in.
5. For a one-person household, 200% of the federal poverty level is \$1,916 per month. *FoodShare Wisconsin Handbook*, § 8.1.1.

DISCUSSION

Wisconsin FoodShare policy states that “[m]ost FoodShare groups are considered categorically eligible if their gross income is at or below 200%” of the federal poverty level. *FoodShare Wisconsin Handbook*, § 4.2.1.1. The only exceptions to this rule are for those with felony drug convictions or who have been found to have committed an intentional policy violation of the program. *Id.* For a one-person household, the size of the petitioner’s, 200% of the federal poverty level is \$1,916 per month. *FoodShare Wisconsin Handbook*, § 8.1.1. Household income includes all income from any source unless FoodShare regulations specifically exclude it. 7 CFR § 273.9(b). Self-employment income must be averaged “over the period the income is intended to cover...” 7 CFR § 273.11(a)(1)(i).

The county agency determined that the petitioner is ineligible for FoodShare after determining that her total income exceeds 200% of the federal poverty level. The source of contention between the parties is whether income from a family trust she reported on her federal income tax return counts toward the limit. The petitioner and her siblings inherited a limited liability corporation that develops property. In 2012, the last year her federal income taxes are available, she reported that her share of the income from the corporation was \$18,910, or \$1,575.91 per month. Adding this to the \$967.90 she receives from social security puts her gross monthly income at \$2,543.81, which is well over the \$1,916 limit. She contends that this should not count because it was reinvested rather than taken out by her as income.

Business income does not include “the costs of doing business.” 7 CFR § 273.9(b)(1)(ii). Costs of doing business include “payments on the principal of the purchase price of income-producing real estate...” 7 CFR 273.11(b). However, if the petitioner’s L.L.C. had merely reinvested all of the profits back into real estate, those profits would not have shown up as income on her tax return. It is up to her to prove by the preponderance of the credible evidence that she is eligible for FoodShare, which requires her to prove that she does not receive income from her family’s L.L.C. Because her federal income tax return indicates that she does receive income from the corporation, she has not met her burden of proving that she is eligible for FoodShare.

CONCLUSIONS OF LAW

1. The income the petitioner is entitled to receive from her family limited liability counts toward her limit when determining whether she is eligible for FoodShare.
2. The petitioner is ineligible for FoodShare because her gross countable income exceeds 200% of the federal poverty level.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 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 21st day of April, 2014

\sMichael D. O'Brien
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 21, 2014.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability