



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

ENE/155576

PRELIMINARY RECITALS

Pursuant to a petition filed February 12, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Wisconsin Department of Administration, by its contract agent, Energy - Milwaukee County, in regards to the denial of an application for Energy Assistance, a hearing was held on March 26, 2014, at Milwaukee, Wisconsin. At the request of the petitioner, the record was held open for 10 days for the submission of additional information.

The issue for determination is whether the Department, by its agents, correctly denied the petitioner's application for Energy Assistance due to household income in excess of program limits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703

By: No Appearance
Energy - Milwaukee County
Milwaukee, WI

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner applied for Energy Assistance (EA) benefits on February 11, 2014. See, Exhibit 1.

3. On the date of application, the petitioner's household was composed of herself, her husband [REDACTED], and her adult son, [REDACTED].
4. On or about February 11, 2014, the county's Energy Assistance contract program issued a Benefits Notice to the petitioner informing her that her EA application was being denied because household income exceeds the program limits. The Notice did not show any computation of the household's income or even state the income counted or household size.
5. The Energy Assistance contractor apparently counted all earned and unearned income reported by the petitioner for herself and [REDACTED] for November and December, 2013, and January, 2014, in determining the household had income in excess of program limits; but tested the household as a three person household using the higher income limit for 3 persons, including [REDACTED], to determine eligibility for Energy Assistance.
6. [REDACTED] was in jail with Huber release privileges from August 22 – December 19, 2013.
7. There is no evidence that the agency counted [REDACTED]'s earned income in determining the household's eligibility for EA. Rather, the evidence indicates that the agency only counted the income of [REDACTED] and [REDACTED] in the three months prior to the month of application, and determined that the household had gross income of \$5,919.96 in these three months. [(REDACTED)(\$1,196 – November, 2013 + \$646 – December, 2013 + \$1,960.96 – January, 2014 = \$3,802.96); (REDACTED) (\$698 – November, 2013 + \$698 – December, 2013 + \$721 – January, 2014 = \$2,117). (\$3,802.96 + \$2,117 = \$5,919.96)].
8. On February 12, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the agency's denial of the household's application for Energy Assistance.

### DISCUSSION

EA is mandated by Wis. Stat. §16.385. The Department of Administration administers the program. §16.385(2)(a). The Department does so by publishing the Wisconsin Home Energy Assistance Program and Operations Manual (Revised August, 2013). The manual must follow the mandate of the statute, but it is up to the Department to specify policies where the statute is silent.

Here, the petitioner asserts that her husband [REDACTED] was in jail with Huber release privileges from August 22 – December 19, 2013, and his income should not be counted, and he should not have been included in the EA household at all. I note also that he was working full-time during this time period. See, Exhibit #4, attached paystubs from [REDACTED] [REDACTED] [REDACTED] for [REDACTED].

The Manual, at § 2.2.6, states as follows:

#### **2.2.6 Counting Household Members**

Enter all persons living in the household on the date of the application unless specifically excluded (see Section 2.2.6.3). All persons in the **economic unit** are considered members of the household if they are in the household on the date of application. A lease may, or may not, list all those satisfying the WHEAP definition of a counted **household member**.

The Manual, at the above-referenced § 2.2.6.3 exceptions, states as follows:

#### **2.2.6.3 Household Members Not Included on Application**

The following is a list of the persons who should *NOT* be included as household members:

- 1) A **temporary household member**. Do not count the person or his/her income.

- 2) A foreign exchange student from another country attending school on an exchange program.
- 3) College students, unless they live in the home full-time and are commuting to school. If the student has any living facilities other than the home they may not be counted in the household—for example: have a dorm room, rent a room or an apartment. Individuals who have started their post-secondary education may not be counted as household members during semester breaks, or over the summer (between terms), unless they are commuting students.
- 4) Foster children who are orphaned, neglected, or delinquent who are placed for care.
- 5) A roomer/boarder: A person who rents a room in a residential structure but does not share in providing for the necessities of life for self or other residents of the structure. Persons living in a housing arrangement with their own room and sharing common spaces are not roomers. The necessities of life are; shelter, heat and utilities. If the applicant rents a room to a roomer, you *do* count the rental income from this roomer/boarder as income.
- 6) A medical attendant (not resident in household): A person who cares medically for the applicant to allow the applicant to remain in their home, instead of a nursing home or institution. This medical attendant does not live with the applicant and does not share in providing or being provided for the necessities of life. The necessities of life are shelter, heat, and utilities. If the medical attendant lives in the household, then the medical attendant is counted as a household member.
- 7) A household member who has been called to active duty in the military and is to be out of the household for at least 60 days. The base income of this individual should not be counted. Any household support provided to maintain the household (i.e., housing allowances, allotments sent directly to the household for support) is counted as income for the household. (i.e., housing allowances, allotments sent directly to the household for support) is counted as income for the household.

In fact, a “Household Member” is also defined in the

**Household Member**

Anyone who on the date of application is living in the household at the time of application who is not a Temporary Household Member. Do not count a person who may have lived in the household during a portion of the preceding three months but is no longer in the household on the application date. Do not count the person or their income to determine total household size or income.

Wisconsin Home Energy Assistance Program and Operations Manual (Revised August, 2013), Chapter 10, DEFINITIONS, at p. 142.

Income eligibility is based on the household members’ income in the three months prior to application. Therefore the agency must verify actual income received in the three months prior to the application. The three month income limit for a 3 person household is \$9,972. For a 2 person household it is \$8,073. See, (<http://homeenergyplus.wi.gov/category.asp?linkcatid=239&linkid=118&locid=25>), for the current income limits.

Accordingly, based upon the foregoing, it appears that the matter must be remanded for review and re-determination. The agency must include [REDACTED] and his income in the household, and review whether the household was eligible under the prevailing 3 person household test. [REDACTED] was living in the household on the date of application, and agency policy requires that he be counted. It is not clear that this occurred, based upon the EA extract, i.e. Exhibits #1 & #2. The agency did not make a representative available either. [REDACTED]'s income must be counted, however, and this may render the household ultimately ineligible, again. The agency is directed to verify [REDACTED]'s wages at [REDACTED] [REDACTED]. (The petitioner has these stubs. The agency must contact her to obtain this information. Because the agency did not appear, I cannot know where to deliver a copy even though it is in the record.)

If the petitioner is again aggrieved by the ultimate re-determination, she may appeal again at that time. But the re-determination will be bound by my decision here that [REDACTED]'s income must be included in the household computations. That legal matter is decided herein.

### **CONCLUSIONS OF LAW**

The EA agency has not established that it correctly denied petitioner's application due to household income because it has not established that it correctly counted the three month income of all three required household members under EA policy. The matter must be remanded for review and re-determination.

**NOW, THEREFORE, it is ORDERED**

That the matter is remanded to the county agency within instructions: to immediately request from the petitioner verification of [REDACTED] [REDACTED]'s gross wages for the period of November 1, 2013 – January 31, 2014; and when received, if timely verified under EA policy, review and re-determine the household's eligibility for Energy Assistance using a 3 person household, retroactive to application on February 11, 2014, and issue all Energy Assistance to which the household was otherwise entitled, if any, with written notice. These actions shall be completed within 10 days of the date of timely verification of [REDACTED]'s income. **IT IS FURTHER ORDERED, that if the petitioner fails to timely verify [REDACTED]'s income, then the petition is in the alternative, 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 3rd day of April, 2014

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\sKenneth D. Duren, Assistant Administrator  
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 3, 2014.

Energy - Milwaukee County  
DOA - Energy Assistance