



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/155645

PRELIMINARY RECITALS

Pursuant to a petition filed February 19, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Barron County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 21, 2014, at Barron, Wisconsin.

The issue for determination is whether the county agency correctly determined the petitioner's income when setting his FoodShare allotment.

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: Candi Gillette

Barron County Department of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Barron County.
2. The petitioner receives \$885 in SSDI each month. His wife earns \$657.25 in self-employment.

3. The petitioner has not submitted any evidence that his wife's self-employment income has changed significantly since 2012.
4. The county agency set the petitioner's FoodShare allotment at \$21 per month.

DISCUSSION

FoodShare benefits are determined by household size and net income. The petitioner challenges the agency's determination of his wife's self-employment income. Federal FoodShare rules require agencies to average self-employment income "over the period the income is intended to cover..." 7 CFR § 273.11(a)(1)(i). The petitioner's household depends upon the self-employment income the entire year. Agencies must use anticipated rather than prior income if the averaged amount fails to "reflect the household's actual circumstances because it has experienced a substantial increase or decrease in business." *Id.* In general, Wisconsin requires agencies to determine income by using the best information available to obtain the best estimate of the recipient's prospective income. *BWI Operations Memo*, 97-113, October 31, 1997, p.3.

The agency initially used an estimate of the petitioner's wife's self-employment based upon a self-employment reporting form rather than her federal income tax return to determine that she made \$804.04 per month. The petitioner then submitted his wife's 2012 federal income tax return, which lowered that income to \$657.25 per month. This caused his monthly FoodShare allotment to increase from \$15 to \$21 per month. He has offered no evidence that a new self-employment reporting form would lower his wife's income further. Moreover, if her income has continued to fall, it should be reflected in her 2013 federal income tax return, which he can submit at any time to demonstrate a change of circumstances. Because this return would cover an entire year, it also would likely be more accurate than a new self-employment form. Because he does not challenge any area of the agency's decision other than its determination of his wife's income, I will dismiss his claim. However, as noted, nothing in this dismissal prevents him from providing his latest tax return to prove that his household's circumstances have changed.

CONCLUSIONS OF LAW

The county agency correctly determined the income of the petitioner's wife and his household's FoodShare allotment.

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 31st day of March, 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 March 31, 2014.

Barron County Department of Human Services
Division of Health Care Access and Accountability