



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/155824

PRELIMINARY RECITALS

Pursuant to a petition filed February 28, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dodge County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 07, 2014, at Juneau, Wisconsin.

The issue for determination is whether the agency erred in its calculation of income and its counting depreciation of the corporation as income.

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: Erin Falcon

Dodge County Department of Human Services
143 E. Center Street
Juneau, WI 53039-1371

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.
2. Petitioner was a recipient of FS benefits for her 4-person household.
3. Petitioner underwent a periodic eligibility review in November and November 2013.

4. Petitioner's husband is sole owner/employee of a corporation.
5. The agency calculated petitioner's FS based on the use of the Self-Employment Income Worksheet-Corporation (see ex. #1). The agency used the petitioner's 2012 tax return as the basis for this calculation.
6. Petitioner's monthly household income is 2,922.08.
7. Following the review, the agency terminated petitioner's FS.
8. Petitioner appealed.

DISCUSSION

A prospective (rather than retrospective) budgeting system is typically used in the FS program. 7 C.F.R. 273.10(c); 7 C.F.R. 273.21(a). The federal regulations provide further limited instruction for treatment of self-employment income:

Sec. 273.11 Action on households with special circumstances.

...

(b) *Allowable costs of producing self-employment income.* (1)
Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor; stock; raw material; seed and fertilizer; payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods; interest paid to purchase income-producing property; insurance premiums; and taxes paid on income-producing property.

(2) In determining net self-employment income, the following items are not allowable costs of doing business:

- (i) Net losses from previous periods;
- (ii) Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), as these expenses are accounted for by the 20 percent earned income deduction specified in Sec. 273.9(d)(2);
- (iii) **Depreciation;** and
- (iv) Any amount that exceeds the payment a household receives from a boarder for lodging and meals.

...

7 C.F.R. § 273.11(b) (emphasis added)

The Wisconsin policy instruction to county agencies is reasonably consistent with the federal regulation:

4.3.3.5.3 Worksheets

To calculate self-employment income, use the self-employment income worksheets to adjust the income figure on the IRS tax forms. The worksheets identify net income and depreciation. Add back in depreciation on the IRS form as indicated on the worksheet.

For each operation, select the worksheet needed. Use the provided tax forms and/or schedule, to complete the worksheet.

The worksheets are:

1. [Sole Proprietor](#) (F-16037)
 - a. IRS Schedule C, Form 1040: Nonfarm Business Income
 - b. IRS Schedule F, Form 1040: Farm Income
 - c. IRS Form 4797: Capital & Ordinary Gains
2. [Partnership](#) (F-16036)

- a. IRS Form 1065: Partnership Income
- b. IRS Schedule K-1, Form 1065: Partner's Share of Income
- 3. [Corporation](#) (F-16034)
 - IRS Form 1120: Corporation Income
- 4. [Subchapter S Corporation](#) (F-16035)
 - a. IRS Form 1120S: Small Business Corporation Income
 - b. IRS Schedule K-1, Form 1120S: Shareholder's Share of Income

Disallowed Expenses

Some specific expenses that are not allowed in the calculation of Self Employment Income for FoodShare are:

1. **Depreciation**
2. Net loss carryover from previous periods (long term capital loss)
3. Federal, State, and local income taxes
4. Charitable donations
5. Work-related personal expenses, such as transportation to and from work
6. Employer work-related personal expenses such as pensions, employee benefit and retirement programs and/or profit sharing expenses (Business expenses for employees' pensions, benefits, retirement programs, and profit sharing expenses are allowable, but the work-related personal expenses of the employer are not).
7. Amortization and depletion
8. Guaranteed payments to partners

FS WI Handbook § 4.3.3.5.3.

The petitioner does not dispute any of the calculations or the use of figures from the 2012 tax return. Petitioner's only argument is that counting depreciation as income is unfair as the figure does not represent actual funds available to her. This is a common argument in these cases. The rule, however, is clear on both the Federal program level and in the guidance to the FS workers and enrollees. With the depreciation counted as income the family income is \$2,922.08. The FS WI Handbook states that a 4-person household gets an allotment of \$0 in FS with such an income. I can only affirm the agency's calculation method and its determination.

CONCLUSIONS OF LAW

The agency did not err in counting depreciation as income.

THEREFORE, it is

ORDERED

That this 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 25th day of April, 2014

\sJohn P. Tedesco
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 25, 2014.

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