



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/156107

PRELIMINARY RECITALS

Pursuant to a petition filed March 14, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services – Wis. Rapids in regard to FoodShare benefits (FS), a hearing was held on May 12, 2014, by telephone. A hearing set for April 17, 2014, was rescheduled at the petitioner’s request.

The issue for determination is whether the Department correctly determined the petitioner’s unearned income for FS purposes.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



By: Atty. John Kivisaari
Greater Wis. Agency on Aging Resources
1414 MacArthur Rd., Suite 306
Madison, WI 53714

Respondent:

Department of Health Services
1 [redacted] Wilson Street, Room 651
Madison, Wisconsin 53703

By: Beulah Garcia, Resolution Coordr.
Northern IM Consortium

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Taylor County.
2. The petitioner has an ongoing FS case as a household of one person. Her case underwent a periodic review, and it was determined that her unearned income had increased. As a result, her FS allotment was reduced from \$92.00 to \$78.00 effective April 1, 2014.

3. The unearned income in question is a royalty (or something similar) from a gas well in [REDACTED], operated by [REDACTED], LLC. The petitioner's share of the gross earnings from the well is \$1,464.65 annually, or \$122.05 monthly, per the 1099 Miscellaneous Income tax form. *See*, Exhibit 3. From that amount [REDACTED] actually issues \$176.04 annually (\$14.67 monthly) to the petitioner. The petitioner has no control over the management of [REDACTED], does not actively manage that entity, and is not an employee of that entity.

DISCUSSION

The petitioner questions the correctness of the calculation of her income for FS purposes for April, 2014, onward. The petitioner's standard FS deductions and gross income amount, other than the money received from [REDACTED], are not in dispute. The budgeting calculations here were performed prospectively. Prospective budgeting should reflect what the petitioner is likely to receive, on average, each month. *FS Wisconsin Handbook (FSWH)*, 4.1.1, online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

There is no dispute that the available portion of the income must be counted for FS purposes. *FSWH*, 4.3.4.1. The federal FS regulation calls for inclusion of royalties as income, but interestingly and ambiguously includes *payments* from royalties, rather than the counting of *gross* royalties:

(v) Payments from Government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

7 C.F.R. 273.9(b)(2)(v). The petitioner asserts that the gross income should not be budgeted, because it is not available to her. She agrees that that the net payment of \$14.67 monthly is available to her and should be budgeted.

It appears that only the net income is available to the petitioner. She credibly testified to that effect, and declared that she only gets a check for the \$176.04 net amount annually. She has supplied her 1099 tax form and a document from [REDACTED] to show her annual income from this asset. The [REDACTED] document is frankly undecipherable to any of the parties to this hearing, including this Judge. None of the deductions taken from gross income by [REDACTED] appear to be a reinvestment of the gross income. Deductions taken from gross revenue by [REDACTED] include a [REDACTED] volume based severance tax and revenue based severance tax. [REDACTED] law provides for the collection and distribution of a severance tax on oil and gas. The oil and gas severance tax is dedicated for the use of municipalities within [REDACTED]. Again, these taxes are not optional and are not a reinvestment of income.

Accordingly, I conclude that the Department must budget the net royalty income of \$176.04 annually. The petitioner also filed a Medicaid-related appeal, which will be dealt with under separate cover, as different rules apply.

CONCLUSIONS OF LAW

1. The Department must budget the gas well net royalty income of \$176.04 annually (\$14.67 monthly), because that is the amount of the payment actually received by the petitioner.

THEREFORE, it is

ORDERED

That the petition is *remanded* to the Department with instructions to redetermine the petitioner's FS allotment amount in accord with the Conclusion of Law above, effective with the April 2014 allotment. This action shall be taken within 10 days of the date of this Decision.

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 5th day of June, 2014

\sNancy J. Gagnon
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 June 5, 2014.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability