



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/156377

PRELIMINARY RECITALS

Pursuant to a petition filed March 31, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on June 18, 2014, at Madison, Wisconsin. At the request of petitioner, a hearing set for May 5, 2014 was rescheduled.

The issue for determination is whether the county agency correctly denied the petitioner's December, 2013 FoodShare (FS) application, due to household income above the FS net income limit for a household of two.

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: David Bernhardt, ESS
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 53 year old resident of Dane County who resides with her husband, [REDACTED].

2. The petitioner submitted an Access application for FoodShare (FS) benefits on December 2, 2013 for her household of two.
3. The petitioner is disabled and received monthly Social Security Disability Income (SSDI) of \$2,089 as of December, 2013.
4. The petitioner's husband received earned income of about \$1,125 every other week from the University of Wisconsin.
5. The petitioner's household's gross income during December, 2013 was \$4,508.14 which was above the gross income limit of \$2,586. Petitioner's net household income was \$3,551.58 during December, 2013.
6. The county agency sent a December 30, 2013 Notice of Decision to the petitioner stating that petitioner's December 2, 2013 FS application was denied due to net household income of \$3,551.58 which was significantly above the net FS income limit of \$1,293 for December, 2013 for a FS group of two.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget **all earned and unearned income of the FS household**. 7 C.F.R. §273.9(b). This includes child support, Supplemental Security Income (SSI), SSDI, child support, and W-2 payments received by household members. FoodShare Wisconsin Handbook, Appendix section 4.3.1.

FS benefits are calculated pursuant to 7 C.F.R. § 273.9. The maximum FS allotment amounts, based on household size, are listed at FoodShare Wisconsin Handbook, Appendix 8.1. In general, a household must *initially* pass the so-called "**gross income limit**". The FS eligibility calculation process allows for certain deductions from gross income to arrive at a "**net income**" then tested against a "**net income limit**". But this process only occurs if the household *first* passes the gross income test. If the applying household does not pass the gross income test, then the net income test, and the applicable deductions, are not even reached.

The gross income limit test does not apply to households with elderly or disabled members. FoodShare Wisconsin Handbook. "Disabled" means that the applicant is receiving one of the following: Supplemental Security Income (SSI) or Disability Insurance Benefits (DIB) from the Social Security Administration; interim assistance pending a SSI or DIB application from the Social Security Administration; SSI-State Supplement benefits from the State in which he or she resides; Veteran's Administration benefits of certain types; retired federal workers receiving disability payments; and railroad workers receiving an annuity under the Railroad Retirement Act of 1974. See, 7, C.F.R. § 271.2 *Definitions. Elderly or disabled member*, at §§ (1-11); see also, 7 C.F.R. § 273.9(d)(3). ("Elderly" means 60 years old or older.) *Ibid*.

In this case, petitioner is not elderly but has been determined disabled, and therefore the gross income limit test does not apply to her.

During the June 18, 2014 hearing, ESS David Bernhardt presented a well-organized and well documented case to establish that the county agency correctly denied the petitioner's December, 2013 FoodShare (FS) application, due to net household income above the FS income eligibility limits for a group of two. The petitioner at first disputed that her household was over the net income limit, but after hearing the county's case, she admitted she was no longer contesting that her household's income was over the net income limit at the time of her December 2, 2013 FS application for a group of two. In this case, the petitioner was unable to refute that her net household income of \$3,551.58 was above the net FS income limit of \$1,293 during December, 2013 for a FS household of two. Accordingly, based upon the above, I must conclude that the county agency correctly denied the petitioner's December, 2013 FoodShare (FS) application due to household income above the FS net income limit for a household of two.

CONCLUSIONS OF LAW

The county agency correctly denied the petitioner's December, 2013 FoodShare (FS) application due to household income above the FS net income limit for a household of two.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 23rd day of June, 2014

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 23, 2014.

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