



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/156811

PRELIMINARY RECITALS

Pursuant to a petition filed April 11, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services ["MiLES"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on May 06, 2014.

The issue for determination is whether petitioner is over the gross income limit for FS.

There appeared at that time via telephone 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: Pang Thao-Xiong, Income Maintenance Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

OTHER PERSON PRESENT:

[REDACTED], petitioner's husband

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County, Wisconsin.
2. There are 2 people in petitioner's FS household (petitioner and her husband).
3. Petitioner's husband is 76 years old.
4. Petitioner's FS household has total monthly gross income of \$2,755.90 consisting of petitioner's unemployment (\$370 per week which is \$1,591.00 per month)¹ and the gross amount of petitioner's husband's SSA benefit (\$1,164.90 per month)².
5. By a notice dated April 9, 2014 MiLES informed petitioner that her household income is over the FS program gross income limit.

DISCUSSION

The FS program has eligibility criteria based on both gross and net incomes. see, 7 C.F.R. § 273.9(a) (2011); *FoodShare Wisconsin Handbook* ["FWH"] 1.1.4 & 4.3.1.

Petitioner lives in a 2-person household. see, 7 C.F.R. § 273.1 (2011); FWH 3.3.1. et. seq. The gross income limit for a 2-person FS household is, at most, \$2,586 per month (200% of the Federal Poverty Level ["FPL"]). FWH 8.1.1.1; see also 7 C.F.R. § 273.9(a)(1)(i) (2011). However, FS households with elderly or disabled members have no gross income limit -- but must meet a net income limit of 100% FPL and are subject to an asset limit of \$3,000. See, *DHS Operation Memo* No. DHS 14-21; Date 5/29/2014; See also, *BEPS/DFS Operations Memo* No. 10-51; Date 07/01/2010; FWH 4.2.1.5.; 7 C.F.R. §§ 273.8(b) & 273.9(a)intro. (2011)

Petitioner's FS household has an elderly member (her husband). Therefore, petitioner's household is not subject to a gross income limit.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's household is not subject to a gross income limit.

¹ When income is received weekly it is multiplied by 4.3 to get monthly income. 7 C.F.R. § 273.9(c)(2)(i) (2011). This is because there are, on average, 4.3 weeks in a month (52 weeks per year divided by 12 months per year).

² Petitioner questioned the amount of \$104.90 that was counted as income. That is the amount of the monthly Medicare premium that is deducted from her husband's monthly SSA benefit. The \$104.90 must be added back in to get the gross amount of her husband's SSA benefit (which is \$1,164.90 per month).

NOW, THEREFORE, it is

ORDERED

That this matter is hereby REMANDED to the County and that, within 10 days of the date of this *Decision*, the County redetermine petitioner's eligibility for FS using the following: *DHS Operation Memo* No. DHS 14-21; Date 5/29/2014; and, *BEPS/DFS Operations Memo* No. 10-51; Date 07/01/2010.

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 30th day of May, 2014

\sSean P. Maloney
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 May 30, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability