



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

ENE/157485

PRELIMINARY RECITALS

Pursuant to a petition filed May 8, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Oconto County Department of Health And Human Services in regard to Energy Assistance (EA), a hearing was held on July 29, 2014, at Oconto, Wisconsin. A hearing set for June 17, 2014, was rescheduled at the petitioner's request. The hearing record was held open for 10 days for submission of additional documents by the parties.

The issue for determination is whether the agency correctly denied the petitioner's November 2013 EA application.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703

By: Ms. Kim Reifsteck, fraud investigator
Oconto County Department of Health And Human Services
501 Park Avenue
Oconto, WI 54153-1612

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Oconto County.
2. The petitioner applied for Energy Assistance as a household of one person on November 5, 2013. He lives in a home located at [REDACTED] Oconto, Wisconsin. That residence is primarily heated by gas. His income consists of \$1,175.00 monthly in Social Security. The petitioner denies that his spouse lived with him at the time of application.
3. The petitioner's spouse, [REDACTED], has lived with the petitioner at his address of [REDACTED] Oconto, Wisconsin since at least November 5, 2013. She has had monthly income ranging from \$1,910 to \$2,156 from her Orange County, California pension, since at least May 2012.
4. The agency issued written notice of denial of the petitioner's Energy Assistance application on approximately April 4, 2014.
5. The petitioner admits that his wife was living with him at his Oconto address from March 2014, forward.
6. The petitioner's testimony as to his wife's residence from November 2013 through February 2014, was not credible.

DISCUSSION

The petitioner's application was correctly denied because the household income for his household of two persons exceeds the program's income limit. The limit for two persons was \$2,691 monthly; this household had income of at least \$3,121 in November 2013. The petitioner denies that his wife resided with him at the time of application. Obviously, the Energy Assistance program has income limits and other requirements for its recipients. To assure that an applicant is eligible, program policy requires that the applicant's income and other questionable items be verified as part of the application process. *Wisconsin Home Energy Assistance Program, Program and Operations Manual (WHEAP POM)*, §3.3.2.5 (2013), at <http://homeenergyplus.wi.gov/refcenter.asp>.

The county investigator spoke to the petitioner on multiple occasions in 2013 and 2014. She requested an alternative, verifiable address for the petitioner's wife. He did not provide her with any alternative address that could be verified. The petitioner lamely asserted that his wife had been living with friends or in hotels at various unspecified out-of-state locations for several years. This Judge has heard the "living with friends" explanation for lack of a verifiable alternative address many times, and it is rarely believable. When asked by the investigator about the amount of his wife's income, the petitioner initially professed not to know if she was retired or had any income. He later acknowledged her retirement, but professed not to know the amount of her pension, even though he testified that she allowed him to make ATM withdrawals from her checking account. The agency further established that [REDACTED] opened a checking account, into which her pension check is deposited, at an Oconto bank in 2012. She (or someone with her PIN) then made at least three withdrawals monthly from an ATM in Oconto from April 2012 through March 2014 (with the exception of January, March, July, August, September, and December, 2013, which still featured at least one Oconto ATM withdrawal).

I share the agency's belief that [REDACTED] lived with her husband at the time of his EA application. Household members who are one "economic unit" are to be combined on one EA application. *WHEAP POM*, §2.2.6. "Economic unit" is defined in policy as follows:

ECONOMIC UNIT

A person or group of related or unrelated persons who

live together in a dwelling unit and jointly share in providing or being provided for the necessities of life for the person(s) in the group. The necessities of life are shelter, heat and utilities. NOTE: Persons living in a cooperative housing arrangement who have their own room and who share common spaces are all part of a single economic unit.

Id., ch. 10. The petitioner, as an applicant, has the burden of proving his eligibility by a preponderance of the credible evidence, and he has not met it. I conclude that [REDACTED] was residing with the petitioner and sharing shelter costs at the time of application. The petitioner was therefore not eligible for the EA benefit for the 2013-2014 heating season.

CONCLUSIONS OF LAW

1. The petitioner was not eligible for Energy Assistance pursuant to his November 2013, application.

THEREFORE, it is

ORDERED

That the petition 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.

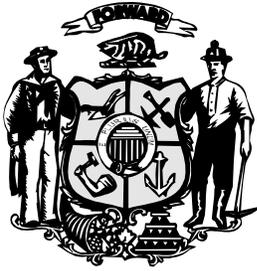
APPEAL TO COURT

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 Administration, 101 East Wilson Street, 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 21st day of November, 2014

\sNancy J. Gagnon
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 November 21, 2014.

Oconto County Department of Health And Human Services
DOA - Energy Assistance
Attorney [REDACTED]