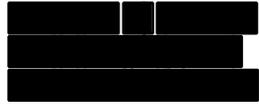




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/158329

PRELIMINARY RECITALS

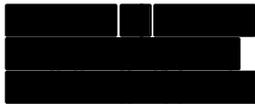
Pursuant to a petition filed June 13, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Shawano County Department of Social Services in regard to FoodShare benefits (FS), a telephone hearing was held on July 31, 2014.

The issue for determination is whether the respondent correctly determined the petitioner's FoodShare allotment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: No Appearance

Shawano County Department of Social Services
607 E. Elizabeth Street
Shawano, WI 54166-3105

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Shawano County.
2. The county agency determined that petitioner had a gross household unearned income of \$1,649.06, and counted income of \$1,338.45.
3. The counted income limit for a household size of 2 is \$1,293.00.

4. On June 13, 2014, petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

As a general rule, applicants for FoodShare (FS) benefits are eligible to receive benefits provided they meet financial eligibility requirements. FS Wisconsin Handbook (FSH), §1.1.3. A threshold financial eligibility requirement is the gross income test. The gross income limit for most households is 200% of the Federal Poverty Level (FPL). Id., 4.2.1.1. The 200% FPL amount for a group of two is \$2,586.00. Id., §8.1.1. Income must be converted to a monthly amount. 7 Code of Federal Regulations, §273.10(c)2(i).

Unearned income and Earned income are counted for the purpose of determining FS eligibility and allotments levels. FS Wisconsin Handbook, §4.3.2, §4.3.4.1. A standard deduction of \$152.00 is applied to all household income for a household of 1 to 3 people. Id., §4.6.2. The earned income deduction is 20%, though it was not applied here, since petitioner does not have earned income. Id., §4.6.3. These two items are deducted from gross income to arrive at adjusted household income. Shelter and utility expenses in excess of 50% of that adjusted household income is deducted. Id., §4.6.7. Also, see, 7 CFR 273.10 generally regarding budgeting calculations. Finally, the allotment applicable to a household is then reduced by 30% of the household's net income. 7 CFR 273.10(e)(2)(ii)(A).

The petitioner receives \$535.36 per month in child support and \$1,113.70 per week in unemployment compensation. I note that the \$259.00 weekly unemployment benefit is derived by multiplying the weekly benefit by 4.3; 4.3 is used rather than four for the number of weeks in a month because when the 52 weeks in a year are divided by the 12 months, the result is 4.3. The petitioner's total monthly income is \$1,649.06. Applying the standard deduction and shelter deduction leaves net income of \$1,338.45.

After reviewing the Department's benefits calculations, I find no error; the agency's income and FS allotment determinations are fully sustained. The petitioner conceded that the respondent was simply following the program rules, but she argued that her income does not provide her with enough funds to pay for food.

The petitioner essentially argues that the program standard is unfair and that the administrative law judge should grant her relief from the FS allotment determination based upon income. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, she is not eligible for a larger FS allotment; no exception applies; and I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

The county agency correctly determined the sufficiency of the petitioner's FS allotment based upon petitioner's household income.

THEREFORE, it is

ORDERED

The petition 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 29th day of August, 2014. 2014

\sPeter McCombs
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 August 29, 2014.

Shawano County Department of Social Services
Division of Health Care Access and Accountability