



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/158340

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 16, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on July 14, 2014, at Viroqua, Wisconsin.

The issue for determination is whether the petitioner is ineligible for FoodShare because her income exceeds the program's net income limit.

There appeared at that time 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: Tom Miller

La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Vernon County.
2. Petitioner's FS household includes her daughter and her daughter's father, GA.

3. Petitioner applied for FS benefits in October, 2013; the application was approved by the respondent for expedited benefits for a household of two, petitioner and her daughter.
4. On October 28, 2013, respondent conducted a FS interview with petitioner, wherein petitioner informed respondent that GA was living with petitioner and their daughter. Petitioner provided GA's paystubs and a lease for [REDACTED], which identified GA as the tenant.
5. On November 6, 2013, the respondent denied petitioner's FS application due to income in excess of program limits. On November 7, 2013, the petitioner called the respondent to report that GA was not residing in her home, and FS was subsequently approved.
6. Following an investigation regarding petitioner's household composition, the petitioner's FS enrollment was terminated by the respondent as of July 1, 2014 due to net income in excess of FS program limits.
7. Petitioner and GA reside at [REDACTED].

### DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$152 per month. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FS Handbook, App. 4.6.7.

The gross income limit for a household of three is \$3,256. Handbook, App. 8.1.1. The net income limit for a household of three is \$1,628. Handbook, App. 8.1.1. The county agency determined that the petitioner's net monthly income is \$2,010.42. She contends that the agency overstates her income because it counts the income of GA, who, she contends, does not reside with her.

The petitioner presented uncorroborated testimony that the GA has not lived with her continuously since she moved to Wisconsin in July of 2013. Petitioner stated that GA stays with other family members, but does spend time at her residence to see their daughter. GA continues to receive some of his mail at the petitioner's residence, and he keeps two vehicles at the property.

The agency's burden of proof is not beyond a reasonable doubt; rather it is by the preponderance of the credible evidence, a fairly low standard that requires only that it show that it is more likely than not that GA lived with the petitioner. The petitioner and GA have a child together and have a history of living together. GA is the named tenant on the lease for the petitioner's residence. Aside from petitioner's testimony, the record contains no evidence that GA lived anywhere else between July 7, 2013, and June 30, 2014. I note that the assertion that GA did not live with petitioner conflicts with petitioner's own statement in her October, 2013 FS interview that GA did live with her. The respondent also presented testimony that GA indicated to respondent's investigator that he lived at petitioner's residence.

I conclude that the record establishes that petitioner and GA reside together. The documentation available demonstrates that GA leased the residence and used the address for work purposes and mail receipt. Therefore, I must uphold the agency's determination to include GA, and GA's income, in petitioner's household. I have reviewed the respondent's income calculation, and do not find any error.

**CONCLUSIONS OF LAW**

The petitioner is ineligible for FoodShare because her income exceeds the program's net income limit

**THEREFORE, it is**

**ORDERED**

That petitioner's appeal 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 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 15th day of August, 2014.

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\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 15, 2014.

La Crosse County Department of Human Services  
Division of Health Care Access and Accountability