



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159470

**PRELIMINARY RECITALS**

Pursuant to a petition filed July 28, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Marathon County Dept. of Social Services in regard to FoodShare benefits (FS), a hearing was held on August 21, 2014, by telephone.

The issue for determination is whether the county correctly budgeted petitioner’s VISTA income in determining his FS.

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Maikou Yang  
Marathon County Dept. of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Dane County. He resided in Marathon County in 2013.
2. Petitioner applied for FS on August 14, 2013. He noted no employment on the application.
3. On August 16 he began work with Wisconsin Campus Connect in the AmericCorps VISTA program. The county determined that petitioner’s VISTA income had to be budgeted for FS purposes. By a notice dated September 17, 2014, the county informed petitioner that he would

receive \$94 FS August, \$162 FS in September, and \$166 in October. The VISTA income was budgeted in determining eligibility. See page 3 of the notice. The notice informed petitioner that if he disagreed with the determination he could appeal by December 17, 2013.

### DISCUSSION

An FS recipient can appeal any action that affects the household's participation in the program. 7 C.F.R. §273.15(1)(a). However, once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g). A negative action can also be the denial of a request for restoration of benefits lost more than 90 days but less than a year prior to the request. Id. In this case there is no evidence that petitioner asked the county to restore his benefits prior to filing the appeal. However, because potentially this is a situation where petitioner could have requested restoration, I will address the merits of the issue anyway.

7 C.F.R. §273.9(c)(10)(iii) excludes as income the following:

Any payment to volunteers under Title II (RSVP, Foster Grandparents and others) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93-113) as amended. Payments under title I of that Act (including payments from such title I programs as VISTA, University Year for Action, and Urban Crime Prevention Program) to volunteers shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the title I program.... New applicants who were not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income.

The FS Handbook, Appendix 4.3.2.2 provides for the follow income disregard: "Income from Title I of the Domestic Volunteers Services Act only when the volunteer received FS at the time s/he joined the Title I program."

In this case petitioner applied for FS on August 14, 2013. He began to work at the VISTA job on August 16. Petitioner argues that technically he received FS on August 16 because FS were backdated to August 14 when they finally were opened in September.

The key word in the federal regulation is "receiving." The income is disregarded if the person is receiving FS when he starts the VISTA position. It does not say "eligible for FS" or "having FS pending," or "within the FS application process." It does not include a proviso that the income can be excluded if FS eligibility is backdated. The federal regulations for FS include minute detail on eligibility issues, and the use of the word "receiving" without any qualifications or exceptions leads me to conclude that the regulation means exactly what it says. Petitioner was not receiving FS when he started his VISTA position, and thus the county correctly determined that the VISTA income had to be counted for FS purposes.

### CONCLUSIONS OF LAW

The county correctly budgeted petitioner's VISTA income because he was not receiving FS when he started his VISTA position.

**THEREFORE, it is**

**ORDERED**

That 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 26th day of August, 2014

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\sBrian C. Schneider  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 26, 2014.

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