



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/159739

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 06, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 24, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly denied Petitioner's application for FS benefits.

There appeared at that time and place 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  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. There are two people in Petitioner's household.
2. On July 22, 2014 Petitioner applied for FS benefits.

3. On July 25 2014 the agency denied Petitioner's application for FS benefits because he was over the gross income limit.
4. Petitioner's son receives SSI. This makes Petitioner's household an elderly, blind, or disabled household. The agency did not apply the elderly, blind, or disabled household rules to Petitioner's case.
5. On August 11, 2014 the agency received Petitioner's request for fair hearing. Petitioner wanted the agency to look at his take home pay and not his gross income.

### **DISCUSSION**

In calculating the petitioner's FS allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county start with gross income. *FSWH*, 1.1.4. If a person's gross income is over 200 percent of the federal poverty level (FPL), then the person is ineligible for FS benefits unless the person is an elderly, blind, or disabled household. *FSWH*, 4.2.1.1. 200 percent of FPL for a family of 2 is \$2,586. *FSWH*, 8.1.1.1. Households that include an elderly, blind or disabled member with gross income over 200% of the FPL must be tested for FS using the regular SNAP rules. *FSWH*, 4.2.1.5. Under the regular SNAP rules, these households have no gross income limit, but must have net income that does not exceed 100% FPL and countable assets that do not exceed \$3,250. *Id.*

The regulations direct the agency to take a limited number of specified deductions in order to calculate net income. First a Standard Deduction is subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a household size of 2 is \$152, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

I have reviewed the agency's calculations in this case. The agency incorrectly denied Petitioner for being over the gross income limit. Petitioner is an elderly, blind, or disabled household. Petitioner's son receives \$322.25 per month is SSI. One must be disabled to receive SSI. It appears that Petitioner's income is over 200 percent of the FPL, however, it also appears that Petitioner has significant deductions including the standard deduction of \$152, an earned income deduction, and support payments of \$409.20. Petitioner may be eligible for excess medical deduction as he is an elderly, blind, or disabled household. Even after the agency runs these calculations, Petitioner may still be ineligible for FS benefits, but nonetheless the denial should be for the correct reason.

### **CONCLUSIONS OF LAW**

The agency incorrectly denied Petitioner's application for FS benefits for being over the gross income limit. Petitioner is an elderly, blind, or disabled household and therefore the gross income limits do not apply to this household.

**THEREFORE, it is**

**ORDERED**

That this case is remanded back to the agency for the agency to re-determine eligibility based upon the elderly, blind, or disabled FS rules. The agency should then re-determine eligibility based on these rules. The agency has 10 days from this decision to re-determine Petitioner's eligibility.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 1st day of October, 2014

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\sCorinne Balter  
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 October 1, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability