



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/160088

PRELIMINARY RECITALS

Pursuant to a petition filed August 23, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a telephonic hearing was held on September 11, 2014, at Janesville, Wisconsin.

The issue for determination is whether the county agency correctly discontinued the petitioner's FoodShare (FS) benefits effective September 1, 2014, due to net household income above the FS net income limit for a household of four.

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: [REDACTED], ESS

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County who resides in a household of four (petitioner, her husband, [REDACTED], and two children). One of the children in her household is her nephew, DM.

2. The petitioner's nephew, DM, receives child support of about \$129.14 per month.
3. The petitioner is employed at [REDACTED] and receives gross monthly income of \$2,805.32. See Exhibits 1 -3.
4. The petitioner receives FoodShare (FS) benefits for a household of four.
5. The county agency sent an August 18, 2014 Notice of Decision to the petitioner stating that her FS benefits would discontinue effective September 1, 2014, due to net household income of \$2,198.60 which was above the FS net income limit of \$1,963.00 for a FS household of four.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget **all** earned and unearned income of the FS household. 7 C.F.R. §273.9(b). This includes child support, Supplemental Security Income (SSI), SSDI, child support, and W-2 payments received by household members. FoodShare Wisconsin Handbook, Appendix section 4.3.1.

FS benefits are calculated pursuant to 7 C.F.R. § 273.9. The maximum FS allotment amounts, based on household size, are listed at FoodShare Wisconsin Handbook, Appendix 8.1. In general, a household must *initially* pass the so-called “**gross income limit**”. The FS eligibility calculation process allows for certain deductions from gross income to arrive at a “**net income**” then tested against a “**net income limit**”. But this process only occurs if the household *first* passes the gross income test. If the applying household does not pass the gross income test, then the net income test, and the applicable deductions, are not even reached.

The gross income limit test does not apply to households with or disabled members. FoodShare Wisconsin Handbook. “Disabled” means that the applicant is receiving one of the following: Supplemental Security Income (SSI) or Disability Insurance Benefits (DIB) from the Social Security Administration; interim assistance pending a SSI or DIB application from the Social Security Administration; SSI-State Supplement benefits from the State in which he or she resides; Veteran’s Administration benefits of certain types; retired federal workers receiving disability payments; and railroad workers receiving an annuity under the Railroad Retirement Act of 1974. See, 7, C.F.R. § 271.2 *Definitions. Elderly or disabled member*, at §§ (1-11); see also, 7 C.F.R. § 273.9(d)(3). (“Elderly” means 60 years old or older.) *Ibid*. In this case, petitioner is not elderly and disabled and therefore the gross income limit test does apply to her. However, the petitioner’s gross household income was not above the gross income eligibility limit for a FS household of four.

During the September 11, 2014 hearing, county agency representative, [REDACTED], presented a well-organized and well documented case to establish that the county agency correctly discontinued the petitioner’s FoodShare (FS) benefits effective September 1, 2014, due to net household income above the FS income eligibility limits for a household of four. The petitioner argued that she did not receive the child support for her nephew of \$129.14, but agreed that the agency correctly determined her earned income. However, even without counting the child support, petitioner’s household income was nevertheless above the net income limit of \$1,963. In any case, the agency representative explained that the child support income goes with the child, and is thus correctly counted as unearned income to the petitioner (because her nephew resides in her household). Furthermore, the county agency submitted child support records to establish the child support payments made to petitioner’s nephew, DM. The petitioner was unable to present any reliable evidence to refute the county agency’s case that it correctly calculated the petitioner’s household’s net income.

In this case, the petitioner’s household’s income did not pass the net income test. The petitioner was unable to refute that petitioner’s net household income of \$2,198.60 was above the FS net income limit of \$1,963.00 for a FS household of four. Accordingly, based upon the above, I must conclude that the county agency correctly discontinued the petitioner’s FoodShare (FS) benefits effective September 1, 2014, due to net household income above the FS net income limit for a household of four.

CONCLUSIONS OF LAW

The county agency correctly discontinued the petitioner's FoodShare (FS) benefits effective September 1, 2014, due to net household income above the FS net income limit for a household of four.

THEREFORE, it is

ORDERED

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 13th day of October, 2014

\sGary M. Wolkstein
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 13, 2014.

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