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Redact

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

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In the Matter of

Redact

DECISION

FOO/161117

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 06, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sauk County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on October 31, 2014, at Baraboo, Wisconsin. At the request of the petitioner, the record was held open for one week for the submission of closing arguments to the Division of Hearings and Appeals (DHA). Both parties submitted their closing arguments to DHA which are received into the hearing record.

The issue for determination is whether the county agency correctly calculated the petitioner's FoodShare (FS) benefits effective October 1, 2014 to be \$16 for a household of one using his most recent 2013 tax return rather than self-employment monthly income forms.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Redact

Respondent:

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

By: Susan Williamson, ESS

Sauk County Department of Human Services  
505 Broadway, 4th Floor  
PO Box 29  
Baraboo, WI 53913

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # Redact) is a 56 year old resident of Sauk County who receives FoodShare (FS) benefits for a household of one.
2. The petitioner has been self-employed (self-proprietor) as a gambler since about 2008.
3. The petitioner submitted a May, 2014 six month report form (SMRF) for the period of November, 2013 through April, 2014 which indicated a loss in income during that period. See Exhibit 3. The petitioner's August 31, 2014 SMRF also indicated a loss.
4. In his 2013 1040 federal tax return (signed April 15, 2014), petitioner stated that he had an annual gross self-employment income of \$17,695.73. See Exhibit 4. \$17,695.73 divided by 12 equals a monthly gross income of \$1,474.65. The petitioner's tax return is the most reliable evidence of his self-employment income in the significant income fluctuations in petitioner's business as a gambler.
5. The petitioner received FS benefits of \$15 for July, August, and September, 2014.
6. The county agency sent a September 8, 2014 Notice of Decision to the petitioner stating that effective October 1, 2014, his FS benefits would increase from \$15 to \$16.
7. The county agency documented how it calculated the petitioner's FS benefits in its September 11, 2014 FS screen providing an itemization of deductions applied to the determination of his \$16 in FS benefits as of October, 2014.
8. The petitioner failed to establish with any reliable evidence that he met the FS criteria for a "change of circumstances" as required in the FoodShare Handbook, 4.3.3: a) petitioner's self-employment business as a gambler is not a new business because his gambling is ongoing since about 2008; b) petitioner did not sell part or all of his business because his gambling is a sole proprietorship; c) petitioner did not establish that he was ill, and that he was unable to pursue his business as a gambler due to any illness; d) petitioner did not establish any substantial increase in his expenses or costs with reliable evidence, such as his tax return; e) as gambling is a game of chance, fluctuations in income (losses and gains) are a normal circumstance, and the only reliable basis for any determination of his average monthly income is to rely upon his most recent tax return.

### DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipients' nonexempt income. 7 C.F.R. §273.9(b).

Treatment of self-employment income is described at 7 C.F.R. §273.11(a). Such income is **annualized over a 12-month period**, unless the income is intended to meet the household's needs over a shorter period. §273.11(a)(1)(i) and (iii). To determine monthly income, the agency must take yearly income, add back in depreciation, amortization, net loss carryovers, and personal expenses, and then divide by twelve. §273.11(a)(2). If the business has had a substantial change or if it has been operating less than one year, the agency shall use a system of anticipating income. §273.11(a)(1)(i). In this case, petitioner did not reliably establish a "substantial change," and he was not operating less than one year as a gambler.

In addition, the county must budget the prior year's net capital gains, again dividing the total by twelve. 7 C.F.R. §273.11(a)(3); Handbook, App. 4.3.3.3. However, if the self-employment is determined on a monthly anticipated income basis, only anticipated capital gains shall be used. 7 C.F.R. §273.11(a)(3). Thus, just as with regular self-employment income, if there is a basis for using anticipated income, such as a decrease in business income, capital gains also should be determined on an anticipated basis.

The petitioner's gross income as determined by the county was \$1,474.65, which is not above the gross income limit.

7 C.F.R. §273.11(a)(1)(i) says only that anticipated income should be used if the household experiences a "substantial increase or decrease in business." The FS Handbook, App. 4.3.3.6 provides more detail:

Calculate self-employment income based on anticipated earnings when:

1. The business was not in operation for at least one full month in the prior tax year.
2. The business has not been in operation for six or more months at the time of the application.
3. Past circumstances do not represent the present.

**Examples of changed circumstances are:**

1. The start of a business.
2. The owner sold a part or all his business.
3. The owner is ill or injured and will be unable to operate the business.
4. There's a substantial cost increase causing less profit for each unit sold.
5. Sales are consistently below previous levels beyond normal sales fluctuations.
6. The business is consistently earning above previous levels beyond normal fluctuations.

In this case, petitioner alleged that past circumstances do not represent his present income situation, and thus there was a significant change in his self-employment circumstances. However, the above policy only indicates to use "changed circumstances" when the FS household experiences a "substantial increase or decrease in business," and provides six examples of "changed circumstances" pursuant to the FS Handbook, App. 4.3.3.6.

However, the county agency convincingly argued that the petitioner's long history of self-employment as a gambler does not meet the above examples of "changed circumstances" per of 4.3.3.6, as explained above. The county representative further argued that gambling: "is a game of chance and there are months you will gamble more and months you will gamble less – this is the fluctuations of the business of gambling . . ." Moreover, the county agency persuasively argued that the only reliable income verification was based upon petitioner's 2014 federal income tax as set forth in Finding of Fact #8 and #4 above. While petitioner contended that his income is less in recent months, the county agency is correct that fluctuations in his self-employment income (losses or gains) of a gambler are to be expected, and are not changes in circumstances but only the normal circumstances of a gambler. Based upon the above, I find that based upon all of these factors and the need for reliable, average income information, the county correctly utilized petitioner's 2014 tax return rather than his submitted SMRFs. Accordingly, I conclude that the county agency correctly calculated the petitioner's FoodShare (FS) benefits effective October 1, 2014 to be \$16 for a household of one using his annual 2014 tax return rather than self-employment monthly income forms.

### **CONCLUSIONS OF LAW**

The county agency correctly calculated the petitioner's FoodShare (FS) benefits effective October 1, 2014 to be \$16 for a household of one using his annual 2014 tax return rather than self-employment monthly income forms pursuant to 7 C.F.R. §273.11(a)(1)(i) and the FS Handbook, App. 4.3.3.6.

**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 5th day of December, 2014

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\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 December 5, 2014.

Sauk County Department of Human Services  
Division of Health Care Access and Accountability