



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

In the Matter of

[Redacted]
[Redact]
[Redacted]

DECISION

ENE/161755

PRELIMINARY RECITALS

Pursuant to a petition filed November 04, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Eau Claire County Department of Human Services in regard to Energy Assistance, a hearing was held on December 16, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner can receive additional Energy Assistance if he was not in his house during the previous heating season.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redact]
[Redacted]

Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703

By: [Redact], Energy Services Worker
Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Eau Claire County.

2. The county agency granted the petitioner \$133 for his heating costs and \$93 for his electrical costs on October 14, 2014. That amount was based on the funds available to the Energy Assistance program and his utility costs during the previous heating year.
3. Using a proxy to determine his benefit would have given him \$133 for heating costs and \$80 for electrical costs.
4. The petitioner was in his house for approximately three months and seven days from October 1, 2013, through May 15, 2014

DISCUSSION

The petitioner seeks more benefits from Energy Assistance, a state-run program established by federal law. *See* 42 USC § 8621, et seq. and Wis. Stat. § 16.27. Benefits are affected by the total funding available for benefits and the household's fuel costs. *2015 WHEAP Operations Manual* (October 2014), p.11. Fuel costs are based upon the amount of fuel used during the previous year. *Id.*, p.13. If the annual fuel usage is not available or provided, the agency uses a proxy amount based upon 75% of the average costs for the same type of dwelling using the same type of fuel and having the same number of rooms. *Id.*, p.13-14

The heating season runs from October 1 through the following May 15. *Id.*, p.11. The petitioner did not live in his house during last year's heating season. He returned for one week in May and stayed through the end of August. Although he had to run his heat to keep his pipes from freezing, he used much less heat than normal. As a result, he points out, his heating assistance was less than in 2010. His current award is \$133 for heating costs and \$93 for electrical costs.

How much he received in 2010 is irrelevant because benefits are based in part on funding. The remaining question is whether the agency can consider that his energy usage was lower than normal because he did not live in the house during the months his heater was running.

It cannot. No system of providing public benefits to a large number of persons can account for every possible situation. Doing so would be too unwieldy and costly, which would cut into the benefits meant for those who need them. As long as the program does not discriminate against a protected class of people and the regulation is not irrational, these broad regulations are legal. Furthermore, the proxy payment provides an alternative to those whose previous fuel costs are unavailable or do not accurately reflect their current costs. The county agency considered using a proxy to determine the petitioner's benefits, but this would have reduced his award by \$13. Although I understand why he seeks more assistance, the agency acted within its legal authority, so I cannot overturn its decision and grant his request.

CONCLUSIONS OF LAW

The county agency correctly determined the petitioner's energy assistance benefit.

THEREFORE, it is

ORDERED

The 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 Administration, 101 East Wilson Street, 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 28th day of January, 2015

\sMichael D. O'Brien
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 January 28, 2015.

Eau Claire County Department of Human Services
DOA - Energy Assistance