



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

ENE/161958

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Racine County Department of Human Services in regard to Energy Assistance, a hearing was held on December 18, 2014, at Racine, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's application for energy assistance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703

By: Dadra Lockridge, Energy Services Worker
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. On October 6, 2014, the Petitioner applied for energy assistance. She reported a household size of four.

3. The agency calculated the Petitioner's gross household income for July, August and September, 2014 as \$12,795.67. This included Petitioner's earned income from Society's Assets, [REDACTED] and IRIS as well as the earned income of another household member RT from [REDACTED]. The income limit for a household of four is \$12,092.
4. In determining the Petitioner's gross income, the agency used actual pay statements from Society's Assets and IRIS. The agency used the Petitioner's and RT's 2013 W-2s or tax statements to determine income from [REDACTED] and [REDACTED].
5. Petitioner's hours at [REDACTED] may have been reduced.

DISCUSSION

Energy Assistance is a state-run program established by federal law. See 42 USC § 8621, et seq. and Wis. Stat. § 16.385. Rules for the program must follow Wisconsin statutes, but where the statutes are silent the Department of Administration may set policies. Eligibility depends upon a household's income not exceeding 60% of the state average. Unless the applicant is a seasonal worker, financial eligibility is based upon the household's gross income during the three months before the application date. Applicants must verify the income of everyone in the household for those three months. If an applicant fails to complete an application within 30 days, the agency must deny it and the applicant must reapply. Wisconsin Home Energy Assistance Program, Program and Operations Manual (Manual), §2.1.

The program has a different rule for determining gross income of "seasonal workers," such as, but not limited to teachers and school employees. Manual, §2.3.5. The Manual requires the agency to divide the worker's prior year's income as reported on a W-2 or tax return by twelve to determine monthly income and multiply the monthly average by three. The goal is to try and capture the available income to the person for the upcoming heating season. To not average it would effectively overstate the months of unemployment.

In this case, the Petitioner testified that her hours at her seasonal job at [REDACTED] have been reduced. In determining her monthly income for purposes of eligibility, the agency used the Petitioner's 2013 tax return to average her monthly income from [REDACTED]. This will not be an accurate average if the Petitioner's hours have been significantly reduced since 2013. The Manual does not specify how the agency is to make a determination in these circumstances. However, if the goal is to try to determine the available income to the Petitioner for this heating season, the agency must use the best available information regarding the Petitioner's income. In this case, the 2013 tax return is not going to be good evidence of the Petitioner's current income. At this point, the best evidence will be the Petitioner's 2014 W-2 forms which should have been issued to the Petitioner by this time. Or, in the alternative, the Petitioner could supply a 2014 wage statement from her employer. In any case, the 2014 wage information should be a more accurate reflection of the Petitioner's income than the 2013 return. ermine the average number of hours and average monthly income based on that evidence.

The Petitioner also disputed the agency's calculation of her earned income from Society's Assets. Similarly, if the Petitioner disputes the agency's calculation, she needs to submit verification of her income for the agency's review. The program allows a household that has been denied a heating benefit to reapply for the denied benefit if the conditions leading to denial of that benefit have changed. Manual, §2.1.

The Petitioner did not present any evidence at the hearing to support her testimony that the agency's calculations of her income were inaccurate. The Petitioner should re-apply for assistance and supply the wage information needed to verify her income. As noted earlier, the agency's use of 2013 tax returns for the [REDACTED] income will not be the best evidence of her current income. The agency should use

2014 W-2s or 2014 wage statements to arrive at a more accurate average of current income from her seasonal work.

CONCLUSIONS OF LAW

The Petitioner should re-apply for assistance and provide supporting documentation of her income, including actual pay statements for Society's Assets, [REDACTED] and IRIS and 2014 W-2s for the seasonal work at [REDACTED].

THEREFORE, it is ORDERED

That 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 Milwaukee,
Wisconsin, this 24th day of February, 2015

\sDebra Bursinger
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 February 24, 2015.

Racine County Department of Human Services
DOA - Energy Assistance