



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[Redacted]
Redact
[Redacted]

DECISION

FOO/162307

PRELIMINARY RECITALS

Pursuant to a petition filed November 29, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on December 23, 2014.

The issue for determination is whether mortgage payments, both principal and interest, must be deducted from unearned rental income for purposed of FS.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact
[Redacted]

Respondent:

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

BY: [Redacted], ESS
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County, Wisconsin.

2. Petitioner's FS closed effective December 1, 2014 because the County determined that petitioner's income was over the FS income limit.
3. Petitioner owns commercial rental property on which she makes mortgage payments consisting of both principal and interest; she manages the property for less than 20 hours per week; she does not live on the property.
4. When calculating petitioner's income for purposes of FS the County deducted only mortgage interest payments (not mortgage principal payments) from petitioner's rental income.

DISCUSSION

Official written state policy as published in the *FoodShare Wisconsin Handbook* ["FWH"] is clear:

"If someone receives rental income but does not actively manage the property 20 or more hours a week the income is unearned. . . .

a. When the owner is not an occupant, 'net rent' is the total rent payment(s) received minus the total mortgage payment (principal and interest) and other verified operational costs such as (but not limited to) hazard insurance, mortgage insurance, and taxes."

FoodShare Wisconsin Handbook ["FWH"] 4.3.4.2.23.a. & 4.3.3.6.4.1; see also, FWH 4.3.3.4 and 7 C.F.R. §§ 273.9(b)(1)(ii) (2011).

In an e-mail dated December 2, 2014 an employee at the Wisconsin Department of Health Service ["DHS"] CARES Information and Policy Resolution Center instructed the County that "workers can and should use tax forms to calculate rental unearned income. . . . We are going to update the HB." It may be true that DHS will update the FWH at some point -- but it has not yet done so. The FWH, as it currently exists, must take precedence over an e-mail from a DHS worker. The FWH is a higher authority than an e-mail from a DHS worker.

CONCLUSIONS OF LAW

For the reasons discussed above, mortgage payments, both principal and interest, must be deducted from unearned rental income for purposed of FS.

THEREFORE, it is

ORDERED

That this matter be REMANDED to the County, that the County redetermine petitioner's eligibility for FS retroactive to December 1, 2014 deducting her mortgage payments (both principal and interest) from her unearned rental income, and issue all FS for which she is otherwise eligible retroactive to December 1, 2014.

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 15th day of January, 2015

\sSean P. Maloney
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 15, 2015.

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