



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/162974

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 30, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services - WI Rapids in regard to FoodShare benefits (FS), a telephone hearing was held on February 04, 2015.

The issue for determination is whether the respondent correctly assessed petitioner’s self-employment income.

There appeared at that time 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: Beulah Garcia

Wood County Human Services - WI Rapids  
320 West Grand Avenue  
PO Box 8095  
Wisconsin Rapids, WI 54495-8095

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Vilas County.
2. The county agency set the petitioner’s FoodShare allotment at \$58 per month, based upon a single person household.

3. The petitioner receives an average of \$757 each month in self-employment income. This amount is based upon the petitioner's 2013 federal income tax return.
4. The petitioner's income is seasonal.
5. The petitioner's utilities are included in his rent.

### **DISCUSSION**

FoodShare allotments are determined by net income and the size of the household. The petitioner lives in a single-person FS household. He has reported self-employment earnings. The county agency determined that his self-employment income is \$757 per month, a figure obtained by dividing the annual income reported on his 2012 federal income tax return by 12. The petitioner contends that this return does not accurately reflect his current income because his self-employment income is seasonal. The agency contends that FoodShare policy requires it to use an income tax return for any ongoing self-employment income.

FoodShare policies are found in the *FoodShare Wisconsin Handbook*, which states the following at § 4.3.3.5.2:

Use IRS tax forms to average income only if:

1. The business was in operation at least 1 full month during the previous tax year,
2. The business has been in operation 6 or more months at the time of the application, and
3. The person does not claim a significant change in circumstances since the previous year.

If all 3 conditions are met, and the tax forms are not complete, ask the client to either complete the appropriate tax form(s) or have the client complete one SEIRF for the previous year's circumstances. Completing the form(s) is solely the client's responsibility.

But this does not mean that the agency must ignore the tax returns or modify a FoodShare allotment each time the recipient claims that his income has changed. Agencies must "[a]verage self-employment income that represents a food unit's yearly income over a 12 month period, even if the income is received within only a short period of time during that 12 months." *FoodShare Wisconsin Handbook*, § 4.3.3.5.

The petitioner argues that his income should be counted in the month it was received. However, as indicated above, FoodShare benefits for self-employed persons are not based upon a particular point in time, but rather upon the whole year. Based upon the record before me, I find that respondent's reliance upon petitioner's 2013 tax return still provides the best evidence of what he will make this year, and the budget was properly calculated. See, *FoodShare Wisconsin Handbook*, § 8.1.2.

### **CONCLUSIONS OF LAW**

1. The county agency correctly used the petitioner's 2013 tax return to determine his self-employment income.
2. The county agency correctly determined the petitioner's FoodShare allotment.

**NOW, THEREFORE, it is**

**ORDERED**

That the petition herein be and the same hereby 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 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 10th day of February, 2015.

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\sPeter McCombs  
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 10, 2015.

Wood County Human Services - WI Rapids  
Division of Health Care Access and Accountability