



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/163130

PRELIMINARY RECITALS

Pursuant to a petition filed January 08, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Green County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on February 04, 2015.

The issue for determination is whether the county agency calculated the petitioner's self-employment income correctly.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Mark Nelson

Green County Department of Human Services
N3152 State Road 81
Monroe, WI 53566

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Green County.
2. The petitioner submitted an application for FS on December 24, 2014. On January 2, 2015, the agency sent a notice to the petitioner stating that the application was approved and that he would receive a monthly FS allotment of \$16 starting in January, 2015.

3. The respondent calculated petitioner's household income to be \$1,840.25, based upon petitioner's 2013 taxes.

DISCUSSION

The only issue to be considered is the budgeting of the petitioner's self-employment income, specifically, the use of his 2013 taxes to determine his income. The county agency used the petitioner's 2013 income tax return to calculate the anticipated earnings for 2015; petitioner's 2014 taxes had not yet been completed.

In general, the federal regulations at §7 CFR 273.11(a) state the following concerning the budgeting of self-employment income:

(a) Self-employment income. The State agency must calculate a household's self-employment income as follows:

(1) Averaging self-employment income. (i) Self-employment income must be averaged over the period the income is intended to cover, even if the household receives income from other sources. If the averaged amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the State agency must calculate the self-employment income on the basis of anticipated, not prior, earnings.

The related FoodShare policies in Wisconsin 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.

The petitioner argues that his 2013 tax return should not be used because there has been a significant change in circumstances since that year. He stated that he is in the farming, and that the bottom has dropped out of the hay market. The respondent contests this. Neither party established whether or not the bottom has, in fact, dropped out of the hay business.

The policy concerning a change in circumstance is found in the *FoodShare Wisconsin Handbook*, which states the following:

4.3.3.6 Anticipating Earnings

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. (Emphasis added)

Changes are effective according to the normal prospective budgeting cycle. The date of an income change is the date you agree a significant change occurred. You must judge whether the person's report was timely to decide any over or underpayment.

Self employment income, by its very nature is somewhat uncertain. Use of SEIRFs and/or IRS forms to determine monthly average income takes this into consideration.

When a new self-employment business is reported or when a change in circumstance occurs and the past circumstances no longer represent the present, recalculate self-employment income:

1. When six or more months of actual self-employment information is available, calculate monthly average self-employment income using at least six months of prior earnings beginning from the date self employment began or the date of the significant change...

Use the average until the person's next review or if a significant change in circumstances is reported between reviews.

I find it notable that FoodShare benefits for self-employed persons are not based upon a particular point in time but rather upon the whole year. The respondent has established the propriety of using the tax forms to prospectively determine income. The petitioner has not established a substantive change in circumstance. Should the petitioner establish lower income on his 2014 tax return, he will need to supply that information to the respondent at his earliest opportunity.

CONCLUSIONS OF LAW

Petitioner has not established a change of circumstance, nor has he established any error on the part of the respondent in using his 2013 tax return to establish his income for FS budgeting purposes.

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 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 27th day of February, 2015.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 27, 2015.

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