



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]
Redact

DECISION

ENE/165576

PRELIMINARY RECITALS

Pursuant to a petition filed April 20, 2015, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Dane County Department of Human Services ["County"] in regard to Energy Assistance ["EA"], a Hearing was held via telephone on June 2, 2015.

The issue for determination is whether it was correct to deny petitioner's February 27, 2015 application for EA.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
Redact

Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703

BY: [REDACTED], Program Manager, Energy Services
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 (38 years old) is a resident of Dane County, Wisconsin.

2. On February 27, 2015 petitioner applied for EA.
3. Petitioner has an EA household group of 2-persons consisting of herself and her mother; petitioner's mother also acts as petitioner's live-in aid.
4. Petitioner's household income was over the EA income limit for all times relevant to this *Decision*; her net household income is in excess of \$11,000 for 3 months.
5. Not all persons in petitioner's EA household (consisting of petitioner and her mother) are (and were not during the relevant time period) recipients of Wisconsin Works ["W-2"/TANF, Food Stamps ["FS"], or Supplemental Security Income. ["SSI"].
6. The County denied petitioner's application for EA because she was over the EA income limit.

DISCUSSION

The EA income test is based on sixty percent (60%) of the State Median Income ["SMI"] level. If the household's gross income is less than or equal to the income limit for its size, the household passes the income test. If the gross income exceeds the limit, the household is not eligible (unless categorical eligibility criteria are met¹). *FFY 2015 Wisconsin Home Energy Assistance Program -- Operations Manual* ["WHEAP Manual"], *Program Eligibility* (Chapter 2), page 2.3.1. (January 2015); See also, Wis. Stat. § 16.27(5) (2013-14).

The test period is the time frame during which income is counted to determine eligibility. The time frame can vary by income type. For most individuals with wages, government benefits, and regular income, the test period is based on gross income received during the three months prior to the date of the application. WHEAP Manual 2.3.2.1.

All gross income received by all household members on the date of application for the appropriate test period must be counted. There are specific instructions for self-employed, seasonal workers, and farmers. Earned income or unemployment compensation for minors under the age of 18 (or full-time high school students) at the time of the application is not counted. WHEAP Manual 2.3.2.2.

No deductions from gross income are allowed for employment-related expenses, childcare, medical expenses, or for any other reason. No deductions from gross income are allowed except as specifically identified in this chapter, or as part of the Ignored/Deducted Income Table (Section 2.3.8). WHEAP Manual 2.3.2.5.

For a time period of three months, 60% of the SMI for a household of 2 for the 2014-2015 heating season is \$8,223.00. See, WHEAP web site at: <http://homeenergyplus.wi.gov/category.asp?linkcatid=239> . See also, Wis. Stat. § 16.27(6) (2013-14). Petitioner's 3-month household income exceeds this amount. Petitioner's household income for a period of 3 months is in excess of \$11,000. Furthermore, petitioner is not a recipient of W-2/TANF, FS, or SSI. Therefore, it was correct to deny petitioner's application for EA because petitioner was over the 3-month income limit.

¹ Categorical eligibility status will allow a household to pass the income test if they are above the 60% SMI level. For a household to be determined as categorically eligible every household member must be a recipient of W-2/TANF, FS, or SSI for each of the preceding three months. W-2 is considered categorical eligibility criteria only if there is a "cash benefit." If some, but not all, of the household members (including ineligible non-citizens) are recipients of W-2/TANF, FS, or SSI for each of the preceding three months, the household is not categorically eligible. WHEAP Manual 2.3.1.2.

Petitioner argues that her mother's income should not count as part of her household income because it is income that her mother receives for her services as petitioner's live-in-aid.

Payments to a disabled person for the services of a medical attendant or live-in medical aid are ignored when the money is paid in total to the attendant or aid for services rendered. The income is ignored for the disabled person, but is count as income for the live-in medical aid if the aid is considered a part of the household. WHEAP Manual 2.3.9. Further, a live-in aid, such as petitioner's mother, is considered a part of the household. WHEAP Manual 2.2.6.3.6. Therefore, petitioner's mother's income must be count as part of petitioner's household income for purposes of EA.

Petitioner testified that she lives in Section 8/HUD housing. She cites to federal law (specifically 24 C.F.R. § 5.403) and argues that "employees can't pay/return monies given by their employer to satisfy utility bills/food costs/or myriad other expenses of their employer. (Section 8/HUD would discern this as a fraudulent act and a prosecutorial reason to try in court)." First, the law cited by petitioner is applicable to federal public housing assistance -- not to EA. Second, even if it did apply to EA it does not support the conclusion petitioner argues for. Third, even if it did support such a conclusion the EA rules at issue here only require that the income of petitioner's mother be counted for EA purposes, the rules do not require petitioner's mother to "pay/return monies given by [her] employer . . . "

Finally, petitioner argues that in prior years she qualified for EA and her circumstances have not changed. The EA representative at the June 2, 2015 Hearing explained testified that petitioner's prior year applications were processed incorrectly.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to deny petitioner's February 27, 2015 application for EA.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 9th day of June, 2015

\sSean P. Maloney
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 June 9, 2015.

Dane County Department of Human Services
DOA - Energy Assistance