



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 02, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Health & Human Services in regard to FoodShare benefits (FS), a hearing was held on June 18, 2015, at New Richmond, Wisconsin.

The issue for determination is whether the county agency correctly seeks to end the petitioner's FoodShare benefits because she failed to provide her federal income tax return six months after the most recent determination of her benefits.

There appeared at that time and place 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: [REDACTED]  
St. Croix County Health & Human Services  
1752 Dorset Lane  
New Richmond, WI 54017-1063

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The petitioner renewed her FoodShare benefits in December 2014.

3. The petitioner receives income from [REDACTED]. She had not completed her 2014 income tax return when she renewed her benefits in December 2014. The agency verified her income with her July 2014 [REDACTED] Income Reporting Form because that was the best information available and she indicated that her income had not changed since then. *Exhibit C*.
4. On May 4, May 14, and May 29, 2015, the agency requested that the petitioner verify her income with her [REDACTED] income with her 2014 federal income tax return. *Exhibits D, F, and L*. They requested this information because the cost of her basic needs allegedly exceeded her household income. *Exhibit E*.
5. The agency presented no evidence that the petitioner's basic needs exceeded her household income.
6. The agency presented no evidence that the petitioner's SEIRFs were not consistent with her actual income.

### DISCUSSION

The petitioner renewed her FoodShare benefits in December 2014. The program's rules required her to verify the information the agency needs to determine their eligibility. 7 CFR § 273.2(f). She had [REDACTED] income that she had verified in July 2014 using a [REDACTED] Income Reporting Form. When she told the agency that her income had not changed since July, it allowed her to use her July SEIRF to confirm her income in December. In May 2015, when she completed her Six-Month Reporting Form, the agency requested that she provide her 2014 federal income tax return to verify her [REDACTED] income. She objects because she contends that the agency can only request further verification if she reports that her circumstances have changed.

As the petitioner asserts, at a six-month review "[REDACTED] income that has already been averaged does not need to be re-verified, unless a significant change is reported." *FoodShare Wisconsin Handbook*, § 6.1.2. The petitioner did not report a change, but the agency can request verification to clarify conflicting circumstance such as when "household expenses exceed income." *FoodShare Wisconsin Handbook*, § 1.3.5. The agency contends that the petitioner's reported shelter costs exceed her income. But it never produced any documentation of this. At an administrative hearing the agency cannot merely assert its position; it must also support its contentions with evidence. The agency could have documented its assertion with the notice showing how much the petitioner's shelter expenses were, but it didn't. Because the agency has not provided any evidence that these expenses exceeded income, it cannot end her benefits on this basis.

The agency can verify income outside of the annual renewal period if it believes "the information is fraudulent or differs from more recent information." *FoodShare Wisconsin Handbook*, § 1.2.1.1. The agency contends that the petitioner's SEIRF differs from her income tax return, but, as with its assertion that the petitioner's living expenses exceeded her income, it never documented this. Therefore, its claim must fail.

I note in making this decision that as in the simultaneous decisions on the petitioner's various medical assistance matters the agency is not without authority to take an action later. However, to do so it must follow its own rules and be able to document that it has done so if the matter is appealed.



**CONCLUSIONS OF LAW**

The agency cannot end the petitioner's FoodShare for lack of verification at her six-month review because it has not demonstrated that it had authority to request the verification.

**THEREFORE, it is** **ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it certify that it has discontinued its attempts to end the petitioner's FoodShare because she failed to provide her 2014 federal income tax return to verify her income. Nothing in this decision prevents the agency from requesting this information again if it can establish a legal basis for doing so.

**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 21st day of July, 2015

\_\_\_\_\_  
Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on July 20, 2015.

St. Croix County Health & Human Services  
Division of Health Care Access and Accountability



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