



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/173514

PRELIMINARY RECITALS

Pursuant to a petition filed April 7, 2016, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Milwaukee Enrollment Services to discontinue FoodShare benefits (FS), a hearing was held on May 4, 2016, at Milwaukee, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether the agency correctly denied FS after a review.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

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

By: [REDACTED]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Through the end of March, 2016 petitioner received FS for a three-person household that included two grandchildren. She filed a renewal application in February and did her interview on March 6, 2016.
3. In the renewal petitioner reported that her only income comes from rent for the other half of the duplex she owns. She reported the rent as \$400 per month.

4. The agency requested verification of the income by a letter dated March 9 with a due date of March 18. No verification was received by that date so the FS were confirmed closed effective April 1, 2016.
5. In early April petitioner and an agency worker had contact. Eventually the agency requested income verification again with a due date of May 6, and the agency agreed to reopen FS back to April 1 if it was received. Petitioner provided a copy of a Schedule SE that the agency determined was insufficient, but at the hearing petitioner agreed to provide her complete 2015 tax return. She did so timely.

DISCUSSION

An FS recipient must do a periodic review to continue eligibility. 7 C.F.R. §273.14. The recipient is required to verify information that can affect eligibility. 7 C.F.R. §273.2(f). If the household fails to verify required information by the time limit, the agency may deny the benefits. 7 C.F.R. §273.14(g)(3); FS Handbook, Appendix 1.2.1.2. The agency should assist the applicant if she requests assistance. FS Handbook, App. 1.2.1.3. If sources of verification are unavailable, the agency should use the best information available. Id.

As noted in the findings, the agency has agreed that if petitioner verified her rental income FS could be reopened back to April 1 (because the agency did not send a denial notice due to the failure to verify). Petitioner now has provided 2015 tax returns, and as pointed out by Ms. [REDACTED], they result in more questions than answers. It is evident that petitioner attempted to do the tax returns on her own, which tax payers are entitled to do. Reviewing the returns it appears that there are errors. Petitioner wrote that in 2015 her rental income was \$15,129, which divides to \$1,260.75 per month, not \$400. However, \$1,260 sounds more like a monthly rent for a duplex than \$400, so I have no reason to believe that to be inaccurate.

As noted in the first paragraph, if sources of verification are unavailable the best information available should be used. Since petitioner attempted to file her own taxes and appears to have made mistakes, I believe that the best information available should be used. It would be unconscionable to deny petitioner and her two young grandchildren FS because petitioner did not fill out her taxes correctly. Therefore, reviewing the tax returns, I find that the best statement of petitioner's rental income and expenses is found in her Schedule E. It shows her income and a list of reasonable expenses. Net income is \$9,157, and if depreciation is added back in as required by FS rules, net income is \$9,918. See 7 C.F.R. §§273.11(b)(2)(iii) for the depreciation rule. Petitioner also lists an \$85 credit from Form 8582, but there is no such form attached to her tax return, and it appears to be a loss carryover that also is not allowed for FS purposes.

With 2015 net income of \$9,918, monthly income from the rental property would average out to be \$826.50. I thus will remand the matter to the agency to determine petitioner's monthly FS retroactive to April 1, 2016 using \$826.50 as her monthly rental income.

CONCLUSIONS OF LAW

Petitioner provided verification of her rental income as best able, and the monthly income derived from her 2015 Schedule E is the best information available to verify the income.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to calculate petitioner’s FS for April, 2016 and beyond using \$826.50 as her monthly rental income based upon the figures on her self-prepared 2015 Schedule E tax return, and to issue appropriate FS. The agency shall do so within 10 days of this decision.

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 May, 2016

\sBrian C. Schneider
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 May 10, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability