



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOO - 175894

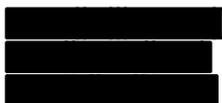
PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 2016, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Portage County Dept. of Human Services to discontinue FoodShare benefits (FS), a hearing was held on August 25, 2016, by telephone.

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

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Portage County Dept. of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Portage County.
2. Petitioner receives FS for herself and her three children. She requested Medical Assistance on May 29, 2016. She initially reported two part-time jobs, but on June 6 she reported that she had to quit the jobs because of an injury. Petitioner's primary employment is as a [Redacted], and on June 30, 2016 she provided her 2015 tax return.

3. The tax return showed net income from the real estate sales to be \$47,391, which averaged out to \$3,949.25 monthly.
4. By a notice dated June 28, 2016, the county informed petitioner that FS would end August 1, 2016 because income was over the limit. The notice included the \$3,949.25 monthly real estate income (it is unclear how the county obtained that amount prior to petitioner providing her tax return unless petitioner provided the figures verbally).

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipients' nonexempt income. 7 C.F.R. §273.9(b). The gross income limit for a household of four is \$4,042; the net income limit is \$2,021. FS Handbook, Appendix 8.1.1. Based upon petitioner's monthly gross income of \$3,949.25, the county determined that petitioner's net income was \$2,823.19, more than \$800 over the net income limit.

Treatment of self-employment income is described at 7 C.F.R. §273.11(a). Such income is annualized over a 12-month period, unless the income is intended to meet the household's needs over a shorter period. §273.11(a)(1)(i) and (iii). To determine monthly income, the agency must take yearly income, add back in depreciation, net loss carryovers, and personal expenses, and then divide by twelve. §273.11(a)(2) and (4). If the business has had a substantial change or if it has been operating less than one year, the agency shall use a system of anticipating income. §273.11(a)(1)(i) and (iv).

The FS Handbook, App. 4.3.3.6 describes situations where the Department considers a substantial change to occur:

1. The start of a business.
2. The owner sold a part or all of the 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.

The county asked petitioner about the status of her real estate business and she reported that there were fluctuations in the winter and summer. She did not report a personal circumstance that would affect her business, nor did she report a consistent sales decrease. Her primary concern is that her personal expenses have increased because of her recent divorce, but those expenses cannot be tied into a change in the business.

Petitioner reported at the hearing that her revenues as of the end of May, 2016 were \$22,000. That appears to be low, but petitioner did not testify that it was dramatically down from other years, especially considering that the typically biggest months for home sales were coming.

I conclude that the county correctly determined petitioner's income to be over the FS limit. Petitioner asked if there was any way to provide FS for a few more months, but the program does not have discretion built into it. The county and the Division of Hearings and Appeals must determine FS based upon the federally mandated formula.

CONCLUSIONS OF LAW

Petitioner's self-employment income was budgeted correctly by the county, putting the household over the FS income limit.

THEREFORE, it is

ORDERED

That the petition for review 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 Health Services, 1 West Wilson Street, Room 651, **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 31st day of August, 2016

\s _____
Brian C. Schneider
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 August 31, 2016.

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