



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOO - 200380

PRELIMINARY RECITALS

Pursuant to a petition filed on November 2, 2020, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS), a hearing was held on November 24, 2020, by telephone.

The issue for determination is whether the agency erred in its reduction of petitioner’s FoodShare allotment from \$624 to \$25 effective November 2020.

There appeared at that time the following persons:


PARTIES IN INTEREST:

Petitioner:



Respondent:


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

By: 
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On 9/29/20 the petitioner conducted a FS renewal with the agency by telephone.

3. One of petitioner's children is now a full-time college student living in the home.
4. The agency removed the child from the FS case because of full-time college status.
5. Petitioner determined the household at 5 persons.
6. Petitioner provided a copy of 2019 tax return to agency. The agency realized that there was a deduction of \$12,776 for depreciation from self-employment enterprise as a cab driver. The agency redetermined petitioner's eligibility and allotment based on this depreciation deduction on the tax return.
7. On 10/2/20 the agency sent petitioner notice that his FS allotment would reduce from \$624 to \$25 per month.
8. Petitioner appealed.

DISCUSSION

As a general rule, all non-exempt household income must be budgeted in determining FS eligibility and the amount of the monthly FS allotments. 7 C.F.R. §273.9(b). There are specific rules for determining self-employment income. Self-employment income is annualized over 12-month periods. 7 C.F.R. §273.11(a)(1). Costs of producing the income are not counted. Such costs may include labor, raw materials, seed and fertilizer, interest, insurance, and property taxes paid on the income-producing property, as claimed. 7 C.F.R. §273.11(a)(4)(i). Depreciation is not considered an allowable cost, and as a result **depreciation deductions allowable for tax purposes are not allowable for FS purposes.** 7 C.F.R. §273.11(a)(4)(ii) (emphasis added).

Petitioner disagreed with this and argued that the agency should not have counted the \$12,776 as income. As an administrative law judge I do not have authority to disregard the clear law governing a program like FS. While petitioner may disagree and feel the application of this rule is unfair, the rules apply to all enrollees and I must follow them. Petitioner's argument is without merit given the clear program guidance.

Petitioner also argued that his child is a full-time college student but is living at home. The petitioner does not believe the child should be excluded from the FS case. But, under *FS Wisconsin Handbook* Section 3.15.1 a full-time college student is ineligible for FS unless the child fits within an exception including employment at least 20 hours per week. The record does not indicate that the child meets any of the exceptions.

CONCLUSIONS OF LAW

The agency correctly included depreciation as income for FS purposes and correctly excluded petitioner's college student child from the assistance group due to full-time college status.

THEREFORE, it is

ORDERED

That this 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, 4822 Madison Yards Way, 5th Floor North, 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.

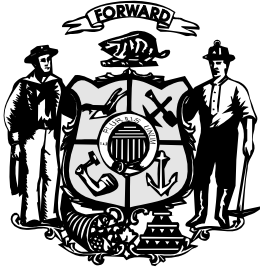
APPEAL TO COURT

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 4th day of January, 2021

\s _____
John P. Tedesco
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 January 4, 2021.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability