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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/142182

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 09, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on October 02, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly included the Petitioner's son's SSI payments in the Petitioner's household income in determining her FS benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Alma Lezama

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 30, 2012, the agency issued a Notice of Decision to the Petitioner informing her that, effective June 1, 2012, her monthly FS benefits would be reduced from \$350 to \$174.

3. The agency included the SSI income of the Petitioner's son MF in the gross monthly income budgeted for the Petitioner's household. The gross monthly income from SSI for MF is \$584.67.
4. The agency determined the Petitioner's household size is two including Petitioner and her minor son MF. MF is disabled.
5. On January 21, 2011, an Order Appointing Guardian was entered in Milwaukee County Circuit Court appointing MF's grandfather as the guardian for MF.
6. MF's grandfather receives MF's SSI check.
7. MF's grandfather has physical placement of MF Monday – Wednesday. The Petitioner has visitation rights and placement of MF from Thursday – Sunday.
8. Prior to June 1, 2012, the agency did not include MF's SSI in the Petitioner's household income.
9. Petitioner receives UC benefits of \$662.20/month. Petitioner has monthly rent expense of \$700.

### DISCUSSION

The FS program's definition of income refers to "household" rather than "individual" income. See 7 CFR § 273.9(b). A FS household, or food unit, consists of one or more persons who live in the same household and purchase and prepare food together for home consumption. FoodShare Wisconsin Handbook (FSH) § 3.3.1; 7 CFR § 273.1(a)(3). Income includes "all income from whatever source" unless it is specifically excluded. *Id.* Among the exclusions from income is "[a]ny gain or benefit which is not in the form of money payable directly to the household." 7 CFR § 273.9(c)(1). The FoodShare Wisconsin Handbook, § 4.3.4.1, instructs agencies not to count unearned income if it "isn't available to the FS group."

Previous DHA FS decisions have held that when a child's SSI check goes directly to one parent who does not share the funds with the child's other parent (in a separate household), the funds are not available to that other household. See DHA Decision Nos. FOO-70898 and FOO-79207. The logic is that the parent who does not receive the check does not have those funds available to meet food or other household expenses and therefore, it should not be counted in that parent's household income. Although one fair hearing decision does not bind another, I find the logic to be persuasive and apply it to this matter. The Petitioner produced a court order to demonstrate that MF's grandfather is his guardian with full powers enumerated under §48.023, Wis. Stats. Petitioner testified credibly that she has MF with her from Thursday – Sunday and that she provides food to him when he is with her. She further testified credibly that MF's grandfather does not provide her with any of MF's SSI funds. The agency did not dispute that the Petitioner does not receive any of MF's SSI funds and that MF's grandfather receives his SSI check directly. In addition, the agency's case comments indicate that the agency has followed this same logic in not counting MF's SSI funds in the Petitioner's household income since at least November, 2011.

If it is possible, I suggest that the agency take steps to ensure that MF's SSI does not automatically populate to the Petitioner's household income each month while the payments are going to MF's grandfather.

### CONCLUSIONS OF LAW

The agency improperly determined the Petitioner's FS benefits when it included MF's monthly SSI income in her household income.

**THEREFORE, it is**

**ORDERED**

That this matter be remanded to the agency with instructions that within 10 days of the date of this decision it redetermine the Petitioner's FS eligibility and allotment effective June 1, 2012. When doing so, it shall not include SSI payments made to MF's grandfather in her household's income.

## REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of October, 2012

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Debra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals

c: Division of Health Care Access and Accountability, DHSADHCAA@Wisconsin.gov -  
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The preceding decision was sent to the following parties on October 25, 2012.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability