



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/144511

PRELIMINARY RECITALS

Pursuant to a petition filed October 11, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Vilas County Department of Social Services in regard to FoodShare benefits (FS), a telephone hearing was held on November 21, 2012.

The issue for determination is whether the respondent erred when it reduced petitioner's FS benefits due to her son's receipt of Social Security 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: Beulah Garcia

Vilas County Department of Social Services
330 Court Street
Eagle River, WI 54521

ADMINISTRATIVE LAW JUDGE:

Peter McCombs

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Vilas County.
2. Petitioner received \$257.00 in FS benefits on June 29, 2012 (constituting her July, 2012, FS payment), for a two-person household. Exhibit 2.

3. On July 16, 2012, respondent sent petitioner notice that her monthly FS benefit would be reduced to \$16.00 because petitioner's son was receiving monthly unearned income in the amount of \$761.00. Exhibit 3. The unearned income pertains to Social Security benefits that petitioner's son receives as a result of his father's disability determination. Id. Petitioner and her son's father do not live together.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's household nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$149 per month. 7 C.F.R. §273.9(d)(1); FS Handbook, §4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, §4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, §4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, §4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FS Handbook, §4.6.7. The maximum shelter deduction is \$459 unless the household includes an elderly or disabled individual; in those cases there is no shelter cap. FS Handbook, §§8.1.3. and 4.6.7.1. Social Security payments are specifically included as "counted unearned income," pursuant to FS Handbook, §4.3.4.2.

The reason for the decrease in FS was the increased household income related to petitioner's son's receipt of Social Security benefits. I reviewed the calculations and found no error in the change.

Petitioner testified that her son's Social Security payments go directly to his father, and that she does not receive any of that money. Unfortunately, while the FS program strives to address the wide variety of income-related issues across the broad population that it serves, it is unable to foresee all possible scenarios. The laws and regulations governing the FS program do not allow petitioner's son's unearned income to be excluded or disregarded. Petitioner did not indicate at hearing whether she had requested that her son's father contribute all or a portion of her son's Social Security benefits to her. She and/or her son may have other options to pursue, and I recommend that she contact legal counsel for more guidance in this regard. I also note that petitioner has indicated that she is no longer working. See, Exhibit 1. If this is the case she should report that change as soon as possible to her agency worker.

CONCLUSIONS OF LAW

The agency correctly reduced FS when petitioner's son began receiving Social Security benefits.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

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 served and 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 Madison,
Wisconsin, this 30th day of November, 2012

\sPeter McCombs
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 November 30, 2012.

Vilas County Department of Social Services
Division of Health Care Access and Accountability