



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/146491

PRELIMINARY RECITALS

Pursuant to a petition filed January 10, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 08, 2013, at Madison, Wisconsin.

The issue for determination is whether the county agency correctly and properly reduced the petitioner's FoodShare (FS) benefits effective January 1, 2013, because half of [REDACTED] military pension payments to his former spouse can be deducted from petitioner's household's countable income for FS calculation determinations.

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: Antonio Esterrich, ESS
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County. The petitioner resides with her significant other, [REDACTED]

2. The petitioner receives FoodShare (FS) benefits for a household of two (petitioner and [REDACTED]).
3. The petitioner was and is entitled to a monthly military pension of \$1,375.00, but only actually receives \$687.50 per month.
4. During petitioner's November, 2012 review, the county agency incorrectly determined that the gross amount of [REDACTED] pension (\$1,375) should be counted as income in calculating her household's FS benefits.
5. The county agency reduced the petitioner's FS benefits from \$367 to \$118 effective January 1, 2012 due to an alleged increase in unearned income (budgeting [REDACTED] gross pension and not half of his pension). The county agency was unable to establish that it sent any adequate or timely notice to the petitioner regarding the January 1, 2013 reduction of her FS benefits.
6. The petitioner was a member of the military who served long enough to become entitled to a military pension. He also was married during the time he was in the military but is now divorced from his ex-wife, [REDACTED].
7. [REDACTED] total monthly retirement amount is \$1,375.00 per month. It is paid by the Defense Finance and Accounting Service (DFAS). Each month, DFAS directly sends to the petitioner's former spouse, 1/2 of [REDACTED] pension (\$687.50) as her entitlement to her former husband's military retirement. This is based on the Court Order issued at the time of the petitioner's divorce.

DISCUSSION

The petitioner questions the correctness of the agency's decision to include the \$ 687.50 that DFAS sends to [REDACTED] former spouse each month in his gross income. The source and amount of the income is not in dispute. The petitioner asserts that it is unfair to include the full \$1,375 in gross pension to petitioner's household FS allotment calculation when [REDACTED] has no access to that money sent to his ex-wife.

The relevant federal FS regulation on treatment of unearned income states as follows:

7 C.F.R §273.9 Income and deductions .

...

(b) *Definition of income.* Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

...

(2) Unearned income shall include, but not be limited to: ...

(ii) Annuities; pensions; retirement, veteran's, or disability benefits; worker's or unemployment compensation ...; old-age, survivors, or social security benefits; ...

(c) *Income exclusions.* Only the following items shall be excluded from household income and no other income shall be excluded:

(1) [vendor payments] ...

(Emphasis added) The *FoodShare Wisconsin Handbook* , §4.5.6.10 defines vendor payments as follows:

A vendor payment is diverted by the provider of the payment to a 3rd party for an expense of the FS group. Vendor payments may be counted or disregarded as income. Ask, "Is the vendor payment something legally obligated to the FS group?" If yes, count the vendor payment or benefit as income...

Some examples of **disregarded** vendor payments are: ...

5. Payments specified by a court order or other legally binding agreement to go directly to a 3rd party instead of the FS group are excluded because they are not otherwise payable to the household.

(Emphasis added).

DFAS was following a court order when it made the \$687.50 monthly payments *directly* to [REDACTED]'s former spouse. That money is not "otherwise payable to the household" of petitioner and [REDACTED]. That amount is not, and never will be available to [REDACTED] unless his former spouse dies or in some way becomes disqualified. In short, the vendor payment provision is an example of income that is **unavailable** to the petitioner's FS household as it is not payable to any member of that household. This would be a different case if DFAS paid the money to [REDACTED] who in turn paid the money to his former spouse. Those are not the facts in this case.

CONCLUSIONS OF LAW

1. The DFAS payments to [REDACTED]'s former spouse are vendor payments that should not be included in the calculation of the petitioner's household gross income.
2. The county agency incorrectly reduced the petitioner's FoodShare (FS) benefits effective January 1, 2013, due to half of [REDACTED]'s military pension payments directly sent to his former spouse can be deducted from his petitioner's household's budgetable income for FS calculation determinations.

THEREFORE, it is

ORDERED

That the case is remanded to the county agency with instructions to: a) disregard the DFAS payments to [REDACTED] former spouse and recalculate the petitioner's FS benefits retroactive to January 1, 2013 (counting only \$675.50 of his pension; and b) issue to the petitioner all FS benefits to which she is entitled retroactive to January 1, 2013 for a FS household of two, within 10 days from the date of this Order.

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 7th day of March, 2013

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
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 March 7, 2013.

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