



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

REHEARING
DECISION

FOO/148069

PRELIMINARY RECITALS

Pursuant to a petition filed March 14, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Oneida County Department of Social Services in regard to FoodShare benefits (FS), a telephonic rehearing was held on June 03, 2013, at Rhinelander, Wisconsin. The petitioner did not appear at his April 22, 2013 hearing and his appeal was dismissed as abandoned. Petitioner filed a rehearing request and that rehearing was granted for good cause. The record was held open for the submission of consecutive briefs with attachments to each party with copies sent to the Division of Hearings and Appeals (DHA). The parties timely submitted their briefs to DHA and are received into the hearing record.

The issue for determination is whether the county agency correctly discontinued the petitioner's FoodShare (FS) benefits effective March 1, 2013, due to household income in excess of the FS net income limit for a household of three.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Gina Hart, ESS

Oneida County Department of Social Services
Oneida Avenue
PO Box 400
Rhinelander, WI 54501

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Oneida County who resides with his minor daughter and minor son.
2. The petitioner received FoodShare (FS) benefits for a household of three.
3. The petitioner receives monthly Social Security of \$1,343.00.
4. The petitioner receives monthly Social Security of \$362 per month as the representative for his son.
5. The petitioner's ex-wife, [REDACTED] [REDACTED], receives monthly Social Security of \$362 per month as the representative payee for her daughter.
6. Neither petitioner nor his daughter have any ability to access or make available the \$362 paid directly to petitioner's ex-wife as representative payee. See June 10, 2013 letter by [REDACTED] [REDACTED] attached to petitioner's June 10, 2013 written closing argument.
7. On July 9, 2012, the county agency issued a Notice to the petitioner informing him that his household's FS benefits would end effective March 1, 2013, because his net household income of \$1,812.50 was above the FS net income limit of \$1,591 for a household of three. That income included the petitioner's Social Security and the Social Security of both his son and his daughter.
8. The petitioner requested this appeal because he asserted his daughter's unearned income should not be included in the calculation of his FS household income, as his daughter's income was unavailable to him or to his daughter (only accessible by his ex-wife). See Exhibit 2.

DISCUSSION

Eligibility and benefit calculations for FS  are based on prospectively budgeted monthly income using estimated amounts. The income to be budgeted is identified through the interview (2.1.3) and the verification (1.2.1) process. **Only include income actually available to the group.** Do not budget income until the first month in which it is received. The worker must use the best-verified information available when determining the best estimate of income.

(Emphasis added).

FoodShare Wisconsin Handbook, § 4.1.1.

The county agency correctly determined that petitioner's two children must be included in his food unit due to *FoodShare Wisconsin Handbook*, § 3.3.1.3. The net income limit for a household of 3 persons is currently \$1,591.00 per *FoodShare Wisconsin Handbook*, § 8.1.1. When a household has net income in excess of the net income limit, it is ineligible. *FoodShare Wisconsin Handbook*, § 1.1.4.

In determining the amount of FS to be issued each month, the county must budget all of the recipient's 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 \$208 per month for a household with six people. 7 C.F.R. §273.9(d)(1); *FoodShare Wisconsin Handbook*, Appendix 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); *FoodShare Wisconsin Handbook*, App. 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); *FoodShare Wisconsin Handbook*, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); *FoodShare Wisconsin Handbook*, App. 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); *FoodShare Wisconsin Handbook*, App. 4.6.7.

In a fair hearing concerning the discontinuance of FS, the burden of proof is on the Department to demonstrate that it correctly and accurately determined the petitioner's FS eligibility, and the petitioner must then rebut this evidence with his own evidence showing the agency was incorrect.

The only remaining issue in dispute for this hearing is whether the county agency correctly included petitioner's daughter's Social Security income in the calculation of petitioner's FS household income, as his daughter's income was unavailable to him or to his daughter (only accessible by his ex-wife). The county representative correctly asserted the general principle that gross social security payments should be counted as unearned income in FS calculations per FSH 4.3.4.2. However, the county agency did not dispute that petitioner's ex-wife was the representative payee for petitioner's daughter and that she directly received her daughter's Social Security who had no access to those funds. The county representative asserted that those funds "should be made available" to petitioner and spent on her needs, and thus should be counted as income to the household in which the daughter resides (petitioner's household). Generally, the county would have been correct.

However, in the instant case, the petitioner established that his daughter's Social security payments were not available to either petitioner or his daughter. As indicated in the above policy, "Only include income actually available to the group per *FoodShare Wisconsin Handbook*, § 4.1.1. The county agency was unable to provide any evidence or policy/law to refute the petitioner's case. In any case, it should be stated that petitioner's ex-wife has a fiduciary duty to spend her daughter's Social Security funds on her daughter's needs.

Based upon the above, I will remand this matter to the county agency with instructions to review and re-determine the petitioner's household's FS eligibility and benefits retroactive to March 1, 2013, disregarding the unearned income of petitioner's daughter as income not available to petitioner's FS household.

CONCLUSIONS OF LAW

- 1) The county agency incorrectly discontinued the petitioner's household's FS effective March 1, 2013, due to net household income in excess of the FS net income limit for a 3 person household.
- 2) The petitioner's daughter's unavailable unearned income means that the matter must be remanded to the agency for review and re-determination of household eligibility and benefits for FS retroactive to March 1, 2013 to reflect that change.

THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to: a) review and re-determine the petitioner's household's FS eligibility and benefits excluding the petitioner's daughter's Social Security unearned income; and b) and issue to the petitioner a new, detailed notice of decision and any FS benefits to which the household may be entitled for a FS household of three, retroactive to March 1, 2013, within 10 days of the date of this decision.

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 29th day of July, 2013

\sGary M. Wolkstein
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 July 29, 2013.

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