



FH

[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148243

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Pierce County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 17, 2013, at Ellsworth, Wisconsin.

The issue for determination is whether the petitioner can claim attorney fees as part of his shelter deduction from gross income for FoodShare purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]-2722
[REDACTED]

Respondent:

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

By:

Pierce County Department of Human Services
412 West Kinne Street
PO Box 670
Ellsworth, WI 54011

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Pierce County.
2. The petitioner is an ongoing FoodShare recipient.

3. After the petitioner's house was foreclosed, which ended his mortgage payments, the county agency no longer allowed him to include his mortgage payments as part of his shelter deduction. He seeks to substitute the attorney's fees spent suing the mortgage holder for the mortgage payments.

DISCUSSION

Eligibility for FoodShare depends upon a household's size and net income. Household income means all income from any source unless 7 CFR § 273.9(c) excludes it. 7 CFR § 273.9(b). Net income is determined after subtracting those deductions—and only those deductions—found in 7 CFR § 273.9(d) from gross income. One of the deductions allowed is a shelter deduction available to those whose shelter costs, including a standard utility allowance set by law, exceed 50% of the net income remaining after subtracting the other deductions. *FoodShare Wisconsin Handbook*. § 4.6.7; 7 C.F.R. §273.9(d)(6)(ii).

The petitioner has run into financial difficulty that led to the foreclosure of his house. Once his house was foreclosed, he no longer had a mortgage, and the county agency stopped considering his mortgage when determining his shelter deduction. This caused his net income to rise and his FoodShare allotment to fall. His son testified that the petitioner was duped by his lender, which has led to over \$10,000 in attorney's fees. He requests that his father be allowed to deduct these attorney's fees. Attorney's fees are not listed as an exclusion in 7 CFR § 273.9(c) or as a deduction in 7 CFR § 273.9(d). The excess shelter deduction includes only the following expenses:

(A) Continuing charges for the shelter occupied by the household, including rent, mortgage, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(B) Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(C) The cost of fuel for heating; cooling (i.e., the operation of air conditioning systems or room air conditioners); electricity or fuel used for purposes other than heating or cooling; water; sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; all service fees required to provide service for one telephone, including, but not limited to, basic service fees, wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; and fees charged by the utility provider for initial installation of the utility. One-time deposits cannot be included.

(D) The shelter costs for the home if temporarily not occupied by the household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

(E) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs shall not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

7 CFR § 273.9(d)(6)(ii)

None of these subsections can be interpreted to allow the petitioner to include attorney’s fees expended fighting a mortgage company in the shelter deduction. Based upon this, I must find that the county agency correctly refused to exclude or deduct attorney’s fees from his income when determining his FoodShare allotment. Because he does not raise any other challenges to the agency’s determination of his income or benefits, I must uphold its decision.

CONCLUSIONS OF LAW

The petitioner cannot deduct his attorney’s fees from his gross income when determining his FoodShare allotment.

THEREFORE, it is **ORDERED**

The petitioner's appeal is 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 1st day of May, 2013

\sMichael D. O'Brien
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 May 1, 2013.

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