



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148817

PRELIMINARY RECITALS

Pursuant to a petition filed April 15, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Manitowoc County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on May 15, 2013, at Manitowoc, Wisconsin. The record was held open for three days for the county agency to submit documents to DHA (with copies to the petitioner) which are received into the hearing record.

The issue for determination is whether the county agency correctly reduced the petitioner's FoodShare (FS) benefits from \$23 to \$16 effective May 1, 2013, due to budgeting the petitioner's son's Social Security income in her FS allotment calculation.

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: Lori Garceau, ES manager

Manitowoc County Department of Human Services

3733 Dewey Street

Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County who resides with her 5 year old son, BC, Jr.
2. The father of BC Jr. is [REDACTED] who lives at a separate residence from the petitioner but has shared custody of their son.
3. The petitioner receives FoodShare (FS) benefits for a household of two.
4. The petitioner receives monthly Social Security benefits of \$765.00.
5. [REDACTED] is the representative payee of record with the Social Security Administration (SSA) for petitioner's son's Social Security benefit of \$765.00, and receives those funds as payee.
6. [REDACTED] is disabled and receives monthly SSDI of about \$1,400.
7. The Social Security Administration (SSA) sent a March 25, 2013 letter to the petitioner stating in pertinent part: "[REDACTED] does not receive the social security child's benefits for her son [REDACTED]. They are paid directly to his father."
8. The county agency determined that petitioner's son's Social Security child benefit of \$618 per month should be budgeted as unearned income to the petitioner in calculating her FS benefits.
9. The county agency sent a notice to the petitioner stating that her FS benefits would be reduced from \$23 to \$16 effective May 1, 2013, due to budgeting her son's Social Security unearned income even though petitioner reported that [REDACTED] receives and keeps that Social Security income.

DISCUSSION

The petitioner asserts that the agency has erred for one clear reason. She testified that the father of her son, [REDACTED], is the representative payee for their child's Social Security benefit, and that he is keeping all those funds. She also alleged that Social Security won't make her the payee at least up to this point. She argues that it is unfair for the agency to budget her child's income in her household's FS, when her [REDACTED] is actually receiving the Social Security. See Finding of Fact #7 above. She further indicated that she has shared custody of her son.

The petitioner's child is included in her FS household because the FS unit rules require that minor children residing with the requesting parent are included in the FS household. *FS Wisconsin Handbook*, 3.3.1.2 (online at www.emhandbooks.wi.gov/fsh/; 7 C.F.R. §273.1(a), (b)(1)(ii).

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] ...
- (2) [irregular, under \$30 quarterly] ...
- (3) [educational assistance] ...
- (4) [loans] ...
- (5) Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household. Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not excluded. ...
- (6) [money for care of 3rd party who is not a household member] ...
- (7) [earnings of child under 18] ...
- (8) [nonrecurring lump sum, such as tax refund] ...
- (9) The cost of producing self-employment income. The procedures for computing the cost of producing self-employment income are described in sec. 273.11.
- (10) [specifically excluded by other federal law] ...
- (11) Energy assistance ...
- (12) Cash donations based on need received on or after February 1, 1988 from one or more private nonprofit charitable organizations ...
- (13) Earned income tax credit payments ...
- (14) Any payment made to an E&T participant under §273.7(d)(3) ...
- (15) Governmental foster care payments ...
- (16) Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support (PASS) which has been approved under section 1612(b)(4)(A)(iii) ...

7 C.F.R. §273.9(b),(c).

There is no question that the FS regulations intend to pull in Social Security benefits paid to the child of a disabled worker, per the above. The regulations are written so that income is included, unless specifically excluded. There is no exclusion for this type of payment, or for a situation in which a minor payee divides his time between two households. There are no state statutes or administrative code provisions that expand upon this explanation of the treatment of income for FS purposes.

The petitioner argues that her son's Social Security payment should be excluded in the FS calculation because that income is not actually **available** to the *petitioner*. *FSWH*, 4.1.1, & 4.3.4. However, the *FSWH* directs the agency to disregard income that is not actually available to the **group**. *Id.* The policy does *not* say to disregard income if it is unavailable to the casehead. Thus, if the dependent's benefits payment belongs to the child, rather than her father, then the income is available to the child, who is a member of her mother's FS group.

The critical question arising from this fact pattern therefore becomes: does the Social Security Child's Benefit resulting from the father/worker's disability belong to the child, or to the father? This is a question that has to be answered by Social Security rules, rather than FS rules. I am not an expert on the rules for Social Security, a federal program. However, the regulations describing eligibility for the Child's Benefit characterize the minor child as the person eligible for the benefit, not her parent. 20 C.F.R. §404.350. Because the child is a minor, the SSA selected a representative payee for him (his father). Given that the benefit belongs to the petitioner's household member – her son -- the county agency's allotment determination as of May, 2013 was correct. See, in accord, prior hearing Decisions in FOO/142517 (Wis. Div. of Hearings & Appeals September 12, 2012), FOO-13/90855 Wis. Div. of Hearings & Appeals May 8, 2008)(DHFS) and FOO-40/83818 (Wis. Div. of Hearings & Appeals May 7, 2007)(DHFS).

As an aside, the SSA has discretion in selecting the payee, within certain guidelines, found at 20 C.F.R. §404.2020 - .2030. My cursory reading of these rules did not uncover any requirement that the SSA must select co-payees for a minor child involved in a joint custody situation. I also note that the Social Security rules seem to require, as a condition of the Child's Benefit being issued at all, that the disabled parent be providing for at least half of the dependent child's needs. 20 C.F.R. §404.360 & .366. If the petitioner asserts that the father is not providing for half of the child's needs, then she must take the matter up with the Social Security Administration and establish that he should not be the protective payee for the child; and further, that he is converting the money to his own uses if he is not using it for the child's needs. That question is not, however, before this tribunal. Rather, I can only conclude that the right to the dependent benefits flows to the child, and the child is a household member. Therefore, the agency correctly attributed this unearned income to the petitioner's FS household and reduced her FS effective May, 2013.

CONCLUSIONS OF LAW

The county agency correctly included the Social Security Child's Benefits received by the petitioner's minor child and household member (based on the disability of his father), even though the non-household member father is the payee for said benefits.

THEREFORE, it is

ORDERED

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 5th day of June, 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 June 5, 2013.

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