



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148907

PRELIMINARY RECITALS

Pursuant to a petition filed April 20, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Walworth County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 13, 2013, at Elkhorn, Wisconsin.

The issue for determination is whether the Department erred in its determination that the \$900 monthly Section 71 payment from petitioner to his ex-wife is not to be deducted from petitioner's household income for purposes of FoodShare eligibility/allotment.

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: Mia Anderson

Walworth County Department of Human Services
W4051 County Rd NN
Elkhorn, WI 53121-1006

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County.
2. Petitioner was previously married to [REDACTED].

3. Petitioner applied for FS on March 27, 2013. Processing was expedited and an allotment of \$354 was approved for April. This allotment was based upon a \$900 deduction from household income.
4. According to the marital settlement agreement between petitioner and ██████ filed in Milwaukee County Circuit Court on April 1, 2013, petitioner agreed to pay \$900 per month as Section 71 payments. After this documentation was provided to the agency, the agency determined that a Section 71 payment is not an expense that may be deducted from household income.
5. On April 11, 2013, the Department sent notice that it was reducing petitioner's FS allotment from \$354 per month to \$134 per month because the agency began counting the \$900 as household income and not a deductible expense as it had previously been doing.
6. Petitioner filed an appeal.

DISCUSSION

Petitioner does not cite any rule or statute to support that this Section 71 payment should be deductible. He simply argues that it is court ordered and, thus, is a lot like a child support payment and should be deducted like child support. He stated in his request for hearing that he believes this is discrimination.

The FoodShare Wisconsin Handbook at Section 4.6 sets forth the allowable deductions from a household's income for purposes of FS allotment and eligibility. A Section 71 payment is not one of them. Similarly, a spousal maintenance payment would not be an allowable deduction. It would be court-ordered also, but it is unallowable.

The Section 71 payments are not child support and are not otherwise deductible from the household income under the rules of the FS Program.

CONCLUSIONS OF LAW

The Department did not err in not allowing the \$900 Section 71 payment to be deducted from household income for FS purposes.

THEREFORE, it is

ORDERED

That this 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 13th day of June, 2013

\sJohn P. Tedesco
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 13, 2013.

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