



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/151118

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 31, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Trempealeau County Department of Social Services in regard to FoodShare benefits (FS), a telephone hearing was held on September 09, 2013.

The issue for determination is whether the respondent correctly determined that petitioner's payment of spousal maintenance is not an allowed child support expense.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Tom Miller

Trempealeau County Department of Soc Services  
36245 Main St.  
PO Box 67  
Whitehall, WI 54773-0067

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Trempealeau County, and the head of a 5 member FS assistance group.

2. A FS review interview was conducted on May 22, 2013. At that time respondent discovered that it had been calculating petitioner's FS benefits incorrectly. Specifically, respondent had been incorrectly allowing spousal maintenance as a child support expense. Exhibit 2.
3. The respondent issued a notice to petitioner on May 23, 2013, indicating that petitioner's monthly FS benefits would be reduced from \$218.00 to \$60.00 as of June 1, 2013.
4. Petitioner filed a timely appeal of the FS reduction on July 31, 2013.

### DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned income. 7 C.F.R. § 273.9(b). Earned Income is gained from the performance of service, labor, or work. Earned income includes, but is not limited to salaries, wages, commission, tips, or payments for services. FoodShare Wisconsin Handbook (FWH) § 4.3.2. Agencies must count earned income only for the month in which it is received, except when the average number of payments increase due to mailing cycle adjustments. FWH § 4.3.2.

From the gross household income, certain deductions are allowed: (1) standard deduction - which currently is \$149 per month for all households. 7 C.F.R. § 273.9(d)(1); (2) earned income deduction - which equals 20% of the household's total earned income. 7 C.F.R. § 273.9(d)(2); (3) medical expense deduction - for medical expenses exceeding \$35 in a month for an elderly or disabled person. 7 C.F.R. § 273.9(d)(3); (4) dependent care deduction for child care expenses. 7 C.F.R. § 273.9(d)(4); and (5) shelter expenses deduction - 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). FWH, § 4.6. The maximum FS allotment amounts, based on household size, are listed at FWH, § 8.1.7.

Child support obligations are also allowed as a FS deduction. The amount an individual is obligated to pay is allowed as a deduction, without consideration for actual payments made. FWH § 4.6.5. Regular child support payments can also be used as a deduction, even if there is no court order in place. The deduction amount may be determined using verification such as: cancelled checks, written documentation between the two parties agreeing to the arrangement, bank statements, or check stubs. FWH § 4.6.5.1. However, **maintenance**, payments made in accord with a property settlement, lying in costs for the birth of a child, the annual child support R&D fee and/or an employer's check withholding fee are not allowable child support expenses. CFR 273.9(d)(5), FWH § 4.6.5.3.

I have reviewed the respondent's determination, and found no error. The petitioner has, in effect, argued that the program standard is unfair and that the administrative law judge should grant him relief from the program requirements. He notes that he is a disabled veteran, and simply cannot afford the reduction in FS benefits. I empathize with the petitioner's situation. However, it is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, the petitioner's maintenance payments are not an allowable deduction; no exception applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

### CONCLUSIONS OF LAW

Spousal maintenance obligations of petitioner do not constitute an allowed expense for FS purposes.

**THEREFORE, it is**

**ORDERED**

That the petition 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 27th day of September, 2013

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\sPeter McCombs  
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 September 27, 2013.

Trempealeau County Department of Soc Services  
Division of Health Care Access and Accountability