



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/151349

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 13, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services – Wis. Rapids in regard to FoodShare benefits (FS), a hearing was held on September 24, 2013, by telephone.

The issue for determination is whether the Department correctly discontinued the petitioner's FS case effective September 1, 2013, due to excess income.

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: Irene Lehman, ES Supr.

Wood County Human Services - WI Rapids  
320 West Grand Avenue  
PO Box 8095  
Wisconsin Rapids, WI 54495-8095

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Forest County.
2. The petitioner had an ongoing FS case for herself and her minor son as of July 2012. In July 2012, she married [REDACTED] [REDACTED], who is disabled and receives Social Security Disability payments.

The petitioner reported this marriage. Mr. [REDACTED] has child support, a \$100 monthly child support arrearage, and spousal support obligations. The agency initially budgeted only his net income after all of these deductions were subtracted, which was \$696.40. This allowed the FS case to stay open with an allotment of \$526 monthly.

3. Mr. [REDACTED] is the subject of a support order for \$1,666 from his income.
4. In February 2013, the case was reviewed and partially corrected. As of April 1, 2013, the FS monthly allotment was \$610, based on a child and spousal support deduction of \$1,766 from the husband's income. In July 2013, the case was again reviewed and (1) an infant was added to the household, and (2) all support order-related deductions from the husband's \$1,768 income were removed. This changed the household income such that the household was over the net income limit for FS, effective September 1, 2013.
5. In anticipation of hearing, the agency again reviewed the FS income calculation. It determined that the only allowable deductions from the household's income of \$2,808.90 (\$1,872.90 husband + \$936 Social Security for infant) were (1) the \$160 standard deduction for a household of four, (2) \$69.90 for excess medical expense (Medicare premium) exceeding \$35, and (3) the \$100 monthly child support arrearage payment. The household was no longer given a deduction for the \$1,149.20 being paid by Social Security directly to a county for the ex-wife, for "spousal support." When this was done, the result remained that the household was ineligible for FS from September 1, 2013, forward, due to excess income.
6. The petitioner timely appealed, and aid was continued pending appeal.

### DISCUSSION

The only issue in this case is the correct treatment—deduction or non-deduction—of the \$1,149.20 that is removed from the husband's Social Security check every month for support that is ultimately paid to his ex-wife. The federal rules for treatment of income in the FS program are found at 7 C.F.R. § 273.9. Within that section, §273.9(b) advises the Department to count all income unless specifically excluded, and declares at (b)(2)(ii) that Social Security payments must be counted.

Turning to what income can be excluded, §273.9(c)(17) declares:

(17) Legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments) and amounts paid toward child support arrearages. However, at its option, the State agency may allow households a deduction for such child support payments in accordance with paragraph (d)(5) of this section rather than an income exclusion.

The alternative of treating child support payments as a deduction is then stated in the rule as follows:

(d) *Income deductions.* Deductions shall be allowed only for the following household expenses:

(1) *Standard deduction ...*

(5) *Optional child support deduction.* At its option, the State agency may provide a deduction, rather than the income exclusion provided under paragraph (c)(17) of this section, for legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the

nonhousehold member (vendor payments) and amounts paid toward child support arrearages. Alimony payments made to or for a nonhousehold member shall not be included in the child support deduction. A State agency that chooses to provide a child support deduction rather than an exclusion in accordance with this paragraph (d)(5) must specify in its State plan of operation that it has chosen to provide the deduction rather than the exclusion.

7 C.F.R. § 273.9(d)(5).

A review of the Department's *Foodshare Wisconsin Handbook (FSWH)*, at §§ 4.3.4.2 and 4.6.5.1-.2, shows that Wisconsin has opted to treat child support payments made as deductions from countable income. See, *FSWH*, available at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

The concern in this case is whether the \$1,149.20 portion of the amount pulled from Mr. ██████'s Social Security is child support or alimony. In Wisconsin, alimony is called "maintenance." See, Wis. Stat. § 767.56. Maintenance cannot be deducted from Mr. ██████'s income for FS purposes. The parties have referred to the \$1,149.20 monthly amount as "spousal support." The Wisconsin statutes do not identify any category of divorce-related support as "spousal support." The categories are child support, maintenance, and family support. In a case with family support, Department policy allows for proration of the family support amount between the persons that the support was intended for, and a deduction of the prorated portion that was intended for persons other than the ex-spouse. *FSWH*, §4.6.5.4. The current court order related to support/maintenance is not in this hearing record. When the petitioner was asked to clarify what the \$1,149.20 was going for, the somewhat confused answer suggested to me that it is maintenance. There was a mention that the ex-wife wanted money for herself, and a reference to the child support arrearage amount increasing. That sounds more like a maintenance payment than a child support or family support payment. Thus, I conclude that \$1,149.20 is a maintenance payment, and therefore cannot be deducted from the petitioner's household income for FS purposes.

If I am wrong in finding that the \$1,149.20 is a maintenance payment, the petitioner may wish to file a rehearing request (see below) and include a copy of the relevant court order, showing that his payment is something other than maintenance.

### **CONCLUSIONS OF LAW**

1. The Department correctly declined to deduct the petitioner's husband's \$1,149.20 monthly maintenance payment to his ex-wife from the household's income for FS purposes.
2. The Department correctly determined that the petitioner's household was ineligible for FS effective September 1, 2013.

**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 7th day of October, 2013

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\sNancy J. Gagnon  
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 October 7, 2013.

Wood County Human Services - WI Rapids  
Division of Health Care Access and Accountability