



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

In the Matter of

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

DECISION

FOO/155232

PRELIMINARY RECITALS

Pursuant to a petition filed January 31, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Menomonie Tribal Agency in regard to FoodShare benefits (FS), a hearing was held on March 11, 2014, at Keshena, Wisconsin.

The issue for determination is whether petitioner’s children’s Social Security income is included in the petitioner’s household income, when the payee is not a household member.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Sue Blodgett, Director
Menomonie Tribal Agency
Po Box 520
Keshena, WI 54135

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Menominee County.

2. Prior to February 2014, the petitioner reported that his two children had moved in with him. He has full-time placement. The children each receive \$529 monthly in Social Security Child's Benefits, and the petitioner's ex-wife is the payee. The ex-wife/children's mother does not reside with the petitioner.
3. The agency added the children's Social Security to petitioner's FS budget. As a result, FS was reduced beginning February 1, 2014, despite the increased number of members in the petitioner's household.
4. The Department issued written notice to the petitioner on January 13, 2014, advising that his FS case would close effective February 1, 2014, due to excess income. The income amounts identified in that notice were incorrect. On February 6, 2014, the Department issued a notice showing the correct income amounts (\$694 in Social Security Old-Age/Retirement for the petitioner, \$529 Social Security for each child); the result was an allotment of \$6.00 for February onward.

DISCUSSION

The petitioner questions the correctness of the agency's decision to include the children's Social Security checks as income in the petitioner's FS household. The source and amount of the income is not in dispute. The petitioner asserts that it is unfair to include the Social Security income in his household's FS allotment calculation when the petitioner has no access to that money.

The petitioner's children are included in his FS household because the FS unit rules require that children under age 22 residing with the requesting parent are included in the FS household. *FS Wisconsin Handbook*, 3.3.1.3, at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm> (viewed March 2014); 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).

The FS regulations intend to pull in Social Security benefits paid to the child of a retired/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/her 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 the children's payment should be excluded in the FS calculation because that income is not actually available to the *petitioner*. However, the *FSWH* directs the agency to disregard income that is not actually available to the *group*. *FSWH*, 4.1.1, & 4.3.4. The policy does *not* say to disregard income if it is unavailable to the casehead. Also, the policy does not list Social Security payments made to a non-household member payee as "disregarded income." *Id.*, 4.3.4.3. Thus, if the payment belongs to the child, rather than the father, then the income is available to the child, who is a member of this father's FS group.

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 his/her parent. 20 C.F.R. §404.350. Because the children were minors, the SSA selected a representative payee for them (the ex-wife). Given that the benefit belongs to the petitioner's household members – the children-- the agency's determinations for February 2014, onward were correct. See, in accord, prior hearing Decision 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. The petitioner mentioned at hearing that his oldest child either is, or is about to be, age 18. Upon reaching age 18, that child may wish to ask the Social Security Administration to have his benefit issued directly to the child. My reading of 20 C.F.R. § 404.2055 suggests that an 18-year old no longer needs a payee. Finally, it appears that the 18-year-old's Social Security Child's Benefit will end with the last month in which he is a full-time high school student, unless he is disabled. *Id.*, § 404.352. When the oldest child's Social Security ends, the petitioner should report this ending of income to the Department promptly, as the FS will probably increase.

CONCLUSIONS OF LAW

1. The Department correctly included the Social Security Child's Benefit received by the petitioner's children and household members (based on the retirement of their father), even though a non-household member is the payee for said benefits.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 1st day of April, 2014

\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 April 1, 2014.

Menomonie Tribal Agency
Division of Health Care Access and Accountability