



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/156255

PRELIMINARY RECITALS

Pursuant to a petition filed March 20, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Marathon County Dept. of Social Services to deny FoodShare benefits (FS), a hearing was held on April 17, 2014, by telephone.

The issue for determination is whether child support paid by petitioner must nevertheless be counted as income on his FS case.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Maiku Yang
Marathon County Dept. of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner is divorced. He and his ex-wife have four children with placement set at 50-50. Each is allowed to claim two of the children as dependents for tax purposes, but petitioner is required to pay \$249 per month child support.
3. Petitioner applied for FS on March 4, 2014 for himself and his two tax-dependent children. The county budgeted petitioner's monthly earned income of \$2,818.84 plus the child support paid on

behalf of the two children (\$124.50) for total income of \$2,943.34. After the earned income, standard, child support (the full \$249), and shelter deductions, net income was \$1,689.56, which was above the net income limit of \$1,628.

4. By a notice dated March 11, 2014, the county denied the FS application.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$152 per month. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 4.6.6. The final deduction is for shelter expenses; 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); FS Handbook, App. 4.6.7.

The gross income limit for a household of five is \$3,256. Handbook, App. 8.1.1. The net income limit for a household of three is \$1,628. Handbook, App. 8.1.1.

The issue is adding back the child support income on behalf of the children. Petitioner pays \$249 child support to his ex-wife for four children, and he gets a \$249 deduction in the FS budget. However, Department policy is that the child support income is attributed to the children on whose behalf it is paid, not to the adult in control of the money, and thus one-half of the monthly support is counted as income in petitioner's FS budget because it is paid on behalf of the two children in the FS household. FS Handbook, App. 4.3.4.2, no. 11.

Petitioner disagrees with the policy, but it is the Department's duty to make and apply policies on income attribution. It is clear that the Department has considered situations such as petitioner's, and the Department concluded that the income must be attributed to the child on whose behalf it is paid. Unless the policy clearly conflicts with federal FS law, the Division of Hearings and Appeals cannot simply overturn it. I can find no conflict in the Code of Federal Regulations that would overrule the Department's policy.

CONCLUSIONS OF LAW

The county correctly attributed child support income petitioner pays on behalf of his children to the children included in petitioner's FS household.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 24th day of April, 2014

\sBrian C. Schneider
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 24, 2014.

Marathon County Department of Social Services
Division of Health Care Access and Accountability