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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/157075

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 23, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Northern ES Consortium to reduce FoodShare benefits (FS), a hearing was held on May 22, 2014, by telephone.

The issue for determination is whether petitioner's daughter's entire social security payment must be budgeted on petitioner's FS case.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Beulah Garcia  
Northern ES Consortium  
10610 Main St., Suite 224  
Hayward, WI 54843

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. Petitioner receives FS for herself and her daughter. Effective May 1, 2014, FS were reduced from \$169 to \$82 following a change in the budgeting of household income.
3. Petitioner's daughter receives \$721 per month social security. Pursuant to first a temporary order and then a final divorce judgment the social security is paid to an unrelated payee. Exhibits 3 and

4. The payee then gives \$305.50 to petitioner, \$305.50 to the child's father, and keeps \$40 as the payee fee, with the remainder given directly to the child.
4. The agency initially removed the part of the social security paid to the child's father and the payee fee from petitioner's FS budget. In April, 2014 the agency was informed by the Department of Health Services that the entire social security payment went with the child, and thus the entire \$721 had to be budgeted on petitioner's FS case. The increased income caused the reduction in FS that petitioner appealed.

### DISCUSSION

The Department requires all social security payments issued to a child to be budgeted on the FS case in which the child is included. FS Handbook, §4.3.4.2; see also Exhibit 2, the e-mail from the DHS Policy Call Center to Rusk County worker Irene Lehman. However, policy also provides that income unavailable to the FS group should not be counted. Id., §4.3.4.1.

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 3<sup>rd</sup> 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) ...

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 social security payments paid to a payee outside the FS household. Social security 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.

Making this case different than the vast majority of cases involving social security is an intervening state circuit court order. The court order requires petitioner's daughter's social security payments to be made to a non-relative payee. The payee then pays out money pursuant to the court order. Only the \$305.50 paid to petitioner and the money paid directly to petitioner's daughter are available to the FS household. I find that under these circumstances the general policy must be subservient to the court order. By court order the portion of the social security paid out to petitioner's ex-husband, and the portion withheld as the payee fee, are unavailable to the household.

### CONCLUSIONS OF LAW

The agency incorrectly budgeted a portion of petitioner's daughter's social security income as income to the FS unit when, by court order, a portion of the income is paid to a non-FS household member and to a payee.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to re-determine petitioner's May, 2014 FS amount by excluding the \$345.50 of petitioner's daughter's monthly social security paid to petitioner's ex-husband and withheld as a payee fee, and to issue appropriate supplemental FS. The agency shall do so within 10 days of this decision.

### **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 30th day of May, 2014

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\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 May 30, 2014.

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