



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/157396

PRELIMINARY RECITALS

Pursuant to a petition filed April 30, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on May 28, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in its reduction of petitioner's FS to 15 dollars effective May 1, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was an ongoing FS recipient under the transitional FS program.
3. Petitioner completed a renewal when her enrollment in the transitional FS program ended.

4. The agency budgeted SS Disability income to petitioner of \$1,512 per month.
5. Petitioner reported her 11-year old daughter living in the home. The daughter receives \$756 of SS surviving child income. The agency budgeted that amount for the household as well. That sum is disbursed to the child's father, however. Petitioner is engaged in a custody dispute with the father presently.
6. The SS-surviving child funds are not available to petitioner.
7. Petitioner has visitation of the child.
8. The Department sent notice to petitioner on March 28, 2014 indicating that her FS would reduce effective May 1, 2014 to \$15.

DISCUSSION

Petitioner's basis for appeal in this case is only that the SS-surviving child benefit on behalf of the daughter goes directly to the child's father. Petitioner does not see any of the money and cannot use it for household expenses, including food. She argues that it is not fair to count the sum as monthly income for the household as the money is not available to petitioner.

The agency representative argued that the money must follow the child. She cites a rule from the FS Handbook but did not have that available during the hearing. After hearing, petitioner sent me copies of FSH §§ 4.3.1 and 4.3.4. In § 4.3.1 I see the language "[i]ncome is any gain or benefit that can be used to purchase goods and services." I do not see how the funds disbursed to the father can be used by petitioner or the food group. It is not clear what he does with it, but he does not appear to share any of it with petitioner or deposit into a joint account for the benefit of the child to be used by either parent. Section 4.3.4 of the FSH is even more specific in stating that unearned income should be counted for the group unless "it isn't available to the FS group. That is the case here. The income going to the father should not be counted.

CONCLUSIONS OF LAW

The SS surviving child should not be counted for petitioner's FS budget because it is not available to petitioner.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and its county agent with instructions to redetermine the allotment for the petitioner consistent with this decision by removing from the income for the group the SS surviving child benefit paid to the father. This redetermined amount shall be retroactive to May 1, 2014. Any appropriate supplements must be issued. These actions must be completed within 10 days.

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 9th day of June, 2014

\sJohn P. Tedesco
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 June 9, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability