



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/163798

PRELIMINARY RECITALS

Pursuant to a petition filed February 04, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 15, 2015, at Black River Falls, Wisconsin.

The issue for determination is whether regular payments the petitioner receives as part of her divorce settlement count as income when determining her FoodShare allotment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES #) is a resident of Jackson County.

2. The petitioner is unemployed. She receives \$1,500 per month from her former husband as part of her divorce settlement to equalize the division of their property. *Exhibit 1*. These payments will continue for 10 years.
3. The petitioner lives alone.
4. The petitioner's rent is \$500 a month. She pays her own utilities.
5. The county agency notified the petitioner on January 29, 2015, that it would seek to recover \$300 of the \$316 in FoodShare she received in January 2015.

DISCUSSION

The petitioner's correct FoodShare benefit, like anyone else's, depends upon household's size and net income. Net income is determined after subtracting from gross income those deductions—and only those deductions—found in 7 CFR § 273.9(d). The primary issue is whether the county agency correctly determined the petitioner's gross income. She receives \$1,500 a month for the next 10 years from her former husband as part of her divorce settlement to equalize the division of property. She contends that because this is part of property settlement, it should not count as income when determining her FoodShare benefits. This money may not be considered income by the Internal Revenue Service or the medical assistance program, but it is by the FoodShare program. According to 7 CFR § 273.9(b), “[h]ousehold income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.” Nothing in 7 CFR § 273.9(c) excludes regularly occurring payments from a property settlement, whether from a divorce or otherwise, from being considered income. This omission is not a mere oversight because the regulations specifically exclude “[m]oney received in the form of a nonrecurring lump-sum payment.” 7 CFR § 273.9(c)(8). If regularly occurring payments were excluded, the regulations would have stated that.

The petitioner's only income is the \$1,500 she receives from her former husband each month. She is entitled to two deductions. The first is the \$155 standard deduction allowed for households with up to three members. *FoodShare Wisconsin Handbook*, § 4.6.2 and 8.1.3; 7 CFR § 273.9(d)(1). She is also entitled to the shelter deduction, which equals the amount that housing costs, including a standard utility allowance currently set at \$446, exceed 50% of the net income remaining after all other deductions are subtracted from gross income. (Because there is a standard utility allowance, actual utility costs are not considered.) *FoodShare Wisconsin Handbook*, § 4.6.7; 7 C.F.R. § 273.9(d)(6)(ii); *FoodShare Wisconsin Handbook*, § 8.1.3. The petitioner currently pays \$500 a month in rent. Because she pays her own utilities, the \$446 standard utility deduction is added to this, bringing her total shelter costs to \$946 per month. Deducting the \$155 standard allowance from his \$1,500 gross income leaves her with \$1,345. Half of this is \$672.50. Her \$946 in shelter costs exceed this amount by \$273.50, which is her shelter deduction. Subtracting the two deductions she is allowed—the \$273.50 shelter deduction and the \$155 standard deduction—from her \$1,500 gross income, leaves her with \$1,071.50 in countable net income. The FoodShare allotment for a one-person household with net income anywhere between \$491 and \$1,506 is \$16. *FoodShare Wisconsin Handbook*, § 8.1.2. Because this is the amount the agency arrived at, I must uphold its decision.

CONCLUSIONS OF LAW

1. The money the petitioner receives from her former husband as part of the property division in their divorce counts as income when determining her FoodShare benefits.
2. The county agency correctly determined that the petitioner is entitled to \$16 a month in FoodShare.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 29th day of April, 2015

\sMichael D. O'Brien
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 29, 2015.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability