



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/163872

PRELIMINARY RECITALS

Pursuant to a petition filed February 11, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Jackson 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 whether she received an overpayment of FoodShare.

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: [Redacted]

Jackson County Department of Human Services
420 Hwy 54 West
Po Box 457
Black River Falls, WI 54615

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) 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 petitioner's Wisconsin Works case was closed because she did not complete a review by October 31, 2014, and she was not participating in the program's activities. *Exhibit 2*.
6. 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

FoodShare agencies must “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This regulation requires the agency to recover all overpayments, regardless of whose error caused the overpayment. The petitioner received \$316 in FoodShare during January 2015. The county agency contends that she should have received only \$16 and seeks to recover the remaining \$300.

The background is that the agency increased her FoodShare allotment from \$65 to \$316 as of January 1, 2015, after determining that she was eligible for Transitional FoodShare. Transitional FoodShare automatically extends FoodShare benefits for five months to those whose Wisconsin Works (W2) ends. Transitional FoodShare is not available to those who fail to complete a renewal of their benefits. *FoodShare Wisconsin Handbook*, § 5.1.1.1. The amount of the benefit is calculated by “using the income (less the W2 payment), expenses, and food group size from the month prior to the last W-2 cash payment.” The recipient then receives a set benefit based upon this calculation for the next five months. *FoodShare Wisconsin Handbook*, § 5.1.1.2.

The petitioner's W-2 benefits did end, but they ended because she failed to complete a review, so she should not have received Transitional benefits. Moreover, even if she had been eligible for Transitional benefits, the agency incorrectly determined her household size and net income—the two factors that determine the amount of FoodShare one receives—when setting her transitional allotment. The petitioner's daughter no longer lived with her, meaning that there was one rather than two persons in her household. In addition, she receives \$1,500 per month from her former husband as part of a property settlement in their divorce; the county agency did not originally count this as income.

The petitioner disputes that the \$1,500 payment should count as income, arguing that because it is part of property settlement it should be excluded. Different programs and agencies determine income differently. The Internal Revenue Service and the medical assistance program would not count this money as income, but the FoodShare program does. 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 correct FoodShare benefit, like anyone else's, depends upon household 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 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). The second is 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 her \$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 between \$491 and \$1,506 is \$16. *FoodShare Wisconsin Handbook*, § 8.1.2. Because the petitioner received \$300 more than this, I must uphold the agency's 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 must repay \$300 of the FoodShare she received in January 2015.

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

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 29, 2015.

Jackson County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability