



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/167962

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 12, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 15, 2015, at Sheboygan, Wisconsin.

The issue for determination is whether the Sheboygan County Department of Human Services (the agency) correctly ended the Petitioner’s FoodShare benefits effective July 1, 2015.

NOTE: ALJ Ishii contacted the parties after the hearing, to obtain a bank statement from the custodial bank accounts in question. They have been marked as Exhibit 10 and entered into the record.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney Vanessa Kuettel  
404 N. Main St. Suite 702  
Oshkosh, WI 54901

Respondent:

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

By: Kris Schmidt, Economic Support Supervisor  
Sheboygan County Department of Human Services  
3620 Wilgus Ave.  
Sheboygan, WI 53081

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.

2. On June 15, 2015, the agency sent the Petitioner a notice, indicating that effective July 1, 2015, her FoodShare benefits would be ending, because her household is over the income limit. (Exhibit 9)
3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 12, 2015. (Exhibit 1)
4. The Petitioner's household consists of four people, herself and three children. (Testimony of Petitioner)
5. The Petitioner has earned income in the amount of \$168.33 per month from self-employment. She also earns \$264.00 every other week from a management company. This converts to a monthly income of \$567.60 (\$264.00 x 2.15 average biweekly pay periods per month). Thus, Petitioner's total monthly earned income works out as follows:  $\$168.33 + \$567.60 = \$735.93$ . (Exhibit 9)
6. The Petitioner receives child support for her youngest daughter (hereinafter referred to as Daughter 2), in the amount of \$325.00 per month. (Exhibit 9)
7. Petitioner's ex-husband, [REDACTED], retired in March 2015. He subsequently applied for Social Security benefits for the two children he has in common with Petitioner. (Testimony of [REDACTED])
8. The children began receiving Social Security benefits in May 2015. (Exhibit 10)
9. [REDACTED] set up custodial accounts for the children, into which their Social Security benefits are deposited. (Testimony of [REDACTED]; Exhibit 10)
10. [REDACTED] uses the money in the children's custodial accounts to pay child support for the children. (Testimony of [REDACTED]; Exhibit 10)
11. Petitioner's son (hereinafter referred to as Son) receives \$758.00 per month in Social Security benefits. (Exhibits 3, 9 and 10)
12. Petitioner's eldest daughter (hereinafter referred to as Daughter 1) receives \$758.00 per month in Social Security benefits. (Exhibits 4, 9 and 10)
13. [REDACTED] is required to pay child support in the amount of \$475.00 per month for Son and \$475.00 per month for Daughter 1. (Exhibits 5 and 6)
14. Petitioner pays \$600 per month for her mortgage, \$200 per month for property taxes, \$60.00 per month for homeowner's insurance and she has a heating expense. (Exhibit 9)

### DISCUSSION

In order to receive FoodShare benefits, individuals must pass both gross and net income limits.

Eligibility and benefit calculations are based on prospectively budgeted monthly income using estimated amounts. *FSH §4.1.1* "Only include income actually **available to the group**." *Id.*, *Emphasis added*.

In general, Social Security payments are to be counted in the household income. *FSH §4.3.4.2, paragraphs four and five*. However, *FSH §4.3.4.1* states that unearned income shouldn't be counted when the money isn't **available to the group**.

The Petitioner does not dispute the agency's calculation of her earned income, nor the amounts she is supposed to receive for child support. However, the Petitioner contends that the Social Security benefits received by Son and Daughter 1 are not available to the group and should not be counted, because they are deposited into a custodial account controlled by her ex-husband, [REDACTED].

It should be noted that [REDACTED] uses the children’s social security money to pay his child support obligation.

It is clear, that the Petitioner’s household is not receiving the total sum of the social security benefit and child support, since [REDACTED] is dipping into one, to pay the other. So, Petitioner is correct that the household income is not as high as the agency calculated, since the agency was counting both the child support and the social security benefits.

The real question, is which item should be disregarded, the children’s social security payments or the child support paid from the social security benefits. Given that the social security payments are available to the children, it is the child support that should be disregarded.

First, the Social Security payment belongs to the children and is to be used for their benefit. It is completely illogical to believe the Social Security Administration would disburse funds to the children for any other reason.

Second, under the Uniform Transfer/Gifts to Minors Act, all funds deposited into the custodial account are the property of the minor, and are to be managed for the minor’s benefit by the custodian, until the minor reaches 21. *See Wis. Stats. §54.854 to §54.898.* Thus, the money is the children’s and should be available to them.

Third, “A custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries...” *Wis. Stats. §54.876* Thus, [REDACTED] has a fiduciary duty to the children to disburse the funds, if the children need the funds for food, shelter, clothing, medical care, etc.

Fourth, the fact that the Social Security payment is held in a custodial account controlled by [REDACTED] does not preclude access to the funds by the children, because they have legal recourse if [REDACTED] does not live up to his duty. Under *Wis. Stats. §54.876(2)*, “On petition of an interested person or the minor, if the minor has attained age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor’s benefits so much of the custodial property as the court considers advisable for the use and benefit of the minor.” Thus, the Petitioner may ask the circuit court to order [REDACTED] to release the money from the account, for the benefit of the children. Son may also petition the court, since he is older than age 14. (Daughter 1 does yet not have this right, but will attain it within the next year.)

Based upon the foregoing, it is found that the Social Security benefits are actually available to the children; are therefore, available to the FoodShare group, and should be counted as part of the household income.

However, this raises a different issue. [REDACTED] is basically stealing from the children’s Social Security income through the custodial accounts to meet his child support obligation. *Wis. Stats. §54.876(3)* states that, “a delivery, payment or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.” Thus, [REDACTED]’s actions are not allowable under the law and he hasn’t really been paying child support. Any payments reflected in the child support screens should be disregarded.

Totaling the Petitioner’s countable income we have:	\$735.93 earned income
	+\$325.00 child support for Daughter 2
	+\$758.00 SSSC Benefits for Son
	+\$758.00 SSSC Benefits for Daughter 1
	<hr/>
	\$2576.93 Total Household Income

To be categorically eligible, most FoodShare groups must have income at or below 200% of the Federal Poverty Level (FPL). *FoodShare Wisconsin Handbook (FSH) §4.2.1.1; 7 CFR 273.2(j)(2).*

200% of FPL for an assistance group of 4 is \$4042 per month. *FSH §8.1.1.1* Thus, Petitioner is categorically eligible for FoodShare benefits, because her income of \$2576.93 is below 200% of FPL.

Once a household passes the gross income test, the following deductions are applied in determining the household's net income:

- (1) a standard deduction –

This is \$155 per month for a household of 1-3 people, *7 CFR § 273.9(d)(1)*:

- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;

For Petitioner this was: \$735.93 x 20% = \$147.19

- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5)*.

During part of the time in question, the heating standard utility allowance (HSUA) was \$446.

During part of the time in question there was a cap of \$490.00 on the shelter cost deduction, *unless* a household had an elderly, blind or disabled member.

*FSH, §§ 4.6.7.1 and 8.1.3.*

Applying the applicable deductions to Petitioner's income we have the following net income calculation, effective July 1, 2015:

Gross Income	\$2576.93	Mortgage	\$600.00
Earned Income Deduction	-\$147.19	Insurance	+\$60.00
Standard Deduction	-\$155.00	Property Tax	+\$200.00
No Medical Expenses exceeding \$35		HSU	+\$446.00
Dependent Care Expenses		-50% net income	-\$1137.37
		<u>before shelter deduction</u>	
Net Income before shelter deduction	\$2274.74	Excess Shelter Expense: \$168.63	
Excess Shelter Expense	- \$168.63		
<hr/> Net Income	<hr/> \$2106.11		

Households with a net income of \$2106.11 are not eligible for Foodshare benefits. *FSH §8.1.2*

Because the Petitioner is the custodial parent of the children, she might wish to notify the Social Security Administration of this fact and have the children's money deposited into an account under her name, or

Petitioner might want to ask the circuit court to have her named as the custodian on the children's accounts, so it is easier for the children to access their money. It seems unlikely that a court would deny the request, since the Petitioner's earned income isn't even enough to cover the shelter expenses for the household and she is no longer eligible for FoodShare benefits. Petitioner might also want to let child support enforcement know that [REDACTED] has been using the children's money to pay his child support and that he is actually in arrears.

### CONCLUSIONS OF LAW

The agency correctly ended the Petitioner's FoodShare benefits effective July 1, 2015.

**THEREFORE, it is** **ORDERED**

That the petition 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 Milwaukee,  
Wisconsin, this 1st day of October, 2015.

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\sMayumi M. Ishii  
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 October 1, 2015.

Sheboygan County Department of Human Services  
Division of Health Care Access and Accountability  
Attorney Vanessa Kuettel