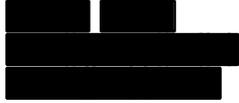




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/169947

PRELIMINARY RECITALS

Pursuant to a petition filed November 06, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Iowa County Department of Social Services in regard to FoodShare benefits (FS), a telephone hearing was held on December 09, 2015.

The issue for determination is whether the respondent correctly reduced petitioner's FS allotment from \$130.00 to \$16.00.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By: [Redacted]

Iowa County Department of Social Services
303 W Chapel Street, Ste 2300
Dodgeville, WI 53533

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Iowa County, and an on-going FS recipient.
2. Petitioner informed the respondent on October 21, 2015, that he had obtained a reverse mortgage, and no longer had a mortgage payment.

3. On October 26, 2015, respondent sent a notice to the petitioner indicating that effective December 1, 2015, petitioner's FS allotment would decrease from \$130.00 to \$16.00 as a result of petitioner's lower shelter deduction.
4. Petitioner appealed the reduction on November 6, 2015.

DISCUSSION

In calculating the petitioner's FS allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires the county to start with gross income, deducting a limited number of identified deductions from that income to calculate the adjusted income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a household size of 1 is \$155, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii). FoodShare Policy directs that reverse mortgages are not deductions, but are disregarded from income determinations:

Reverse Mortgage

Disregard reverse mortgage payments made to homeowners. Reverse mortgage payments are loans against the borrower's home and are considered an asset the month received and thereafter.

FS Wisconsin Handbook, 4.3.4.

The petitioner argues that the reverse mortgage should not affect his FS determination, since he had to use those funds to address a septic issue that would have made his home unsaleable. FS policy, however, does not permit a worker to continue to budget mortgage payments when there are none.

The petitioner has in effect argued that the program standard is unfair and that the administrative law judge should grant him relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, he is not eligible for a greater FS benefit; no exception applies; and I am without any equitable powers to direct any remedy beyond the remedies available under law. I have reviewed the respondent's budget and have determined no error exists.

CONCLUSIONS OF LAW

The agency correctly calculated the petitioner's FS benefits in the amount of \$16.00.

THEREFORE, it is

ORDERED

That this 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 Madison,
Wisconsin, this 22nd day of December, 2015

\sPeter McCombs
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 December 22, 2015.

Iowa County Department of Social Services
Division of Health Care Access and Accountability