



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/172093

PRELIMINARY RECITALS

Pursuant to a petition filed February 16, 2016, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Northern IM Consortium to discontinue FoodShare benefits (FS), a hearing was held on March 9, 2016, at Madison, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether a reverse mortgage obligation can be used as a shelter expense in the monthly FS calculation.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Northern IM Consortium
10610 Main St., Suite 224
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Vilas County.
2. Until the agency action petitioner and her husband received FS as a two-person household. In the FS calculation they were credited with a monthly mortgage expense of some \$3,200. The couple has a reverse mortgage on their home, and the \$3,200 is the monthly interest on the mortgage. The couple is not making payments; they simply allow the interest to accrue.

3. The reverse mortgage is the only mortgage on the property. When the couple took out the first mortgage their original mortgage was paid off.
4. In 2014 the agency attempted to recover an FS overpayment against the couple, arguing that they had received the shelter deduction incorrectly. In Fair Hearing Decision no. FOP-155197, dated April 4, 2014, the Division of Hearings and Appeals ordered the overpayment rescinded. The major factor in the determination was petitioner's testimony that the reverse mortgage "pays her monthly mortgage obligation," and that it does not act as a usual reverse mortgage. See page 2 of the decision, which is marked as Exhibit 2 in the record.
5. In December, 2015 the agency began an annual renewal of the couple's FS. The agency determined that it was incorrect to allow the \$3,200 mortgage interest as a shelter expense, and informed petitioner that it intended to remove it from the FS calculation. Following that discussion petitioner refused to complete the renewal.
6. By a notice dated December 18, 2015 the agency informed petitioner that FS would end January 1, 2016 because the renewal was not completed. FS were not continued pending this decision.

DISCUSSION

An FS recipient must do a periodic review to continue eligibility. 7 C.F.R. §273.14. Failure to complete a review results in the closing of the case. 7 C.F.R. §273.14(e)(2); FS Handbook, Appendix 2.2.1.4.

In this case petitioner failed to complete the review because she and her husband did not agree with the agency's proposed action regarding the shelter expense. Removing the \$3,200 monthly shelter expense from the FS calculation would result in FS being reduced from the maximum \$367 monthly allotment to the minimum \$16 allotment. Petitioner contests the removal of the shelter expense.

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$155 per month. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(6); FS Handbook, App. 4.6.7. The maximum shelter deduction is \$490 unless the household includes an elderly or disabled individual; in those cases there is no shelter cap. FS Handbook, App. 8.1.3. and 4.6.7.1. This last provision applies to petitioner because both individuals are over age 65.

Shelter costs are defined as "continuing charges for shelter occupied by the household, including rent, mortgage, condo and association fees, or other continuing charges leading to the ownership of the shelter." 7 C.F.R. §273.9(d)(6)(ii)(A). The FS Handbook, App. 4.6.7.2 simply states that a home mortgage is an allowable shelter expense. The key to the definition is the idea that the expense is a continuing charge required to be paid by the homeowner.

In the prior decision, the Administrative Law Judge (ALJ) clearly took as a key element the idea that the reverse mortgage was being used to pay the couple's monthly mortgage payment, and thus the couple's reverse mortgage is not a "typical reverse mortgage." See page 3 of the decision.

I conclude that the interest obligations incurred monthly are not shelter expenses. The prior decision was based upon the incorrect impression given to the ALJ that the reverse mortgage was paying another, ongoing mortgage obligation. In fact, this reverse mortgage is not an unusual one; it is a typical reverse mortgage. The couple has no continuing monthly payment and no monthly payment is being made. The couple thus has been receiving the benefit of a monthly shelter expense in the FS calculation without actually paying a monthly shelter expense. The couple's only actual shelter expenses are utilities, property taxes, and insurance.

Petitioner argues that they are using the equity in their home to pay the mortgage, but that argument is questionable. The shelter expense is a deduction from monthly income. The couple is not using income to pay the reverse mortgage. They are reducing the equity value in their home monthly. The purpose of the shelter deduction is to alleviate the effect of using income to pay for shelter. This couple is not paying this expense with income and thus should net receive a deduction from income in the FS calculation.

CONCLUSIONS OF LAW

1. The agency correctly closed FS because petitioner did not complete her annual renewal.
2. A monthly interest charge on a reverse mortgage where no payment is being made by the mortgagee is not a shelter expense that can be used in the FS calculation.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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 16th day of March, 2016

\sBrian C. Schneider
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 March 16, 2016.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability