

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 30, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2008AP3078

Cir. Ct. No. 2007CV16174

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

RAFAEL A. RODRIGUEZ,

PETITIONER-APPELLANT,

v.

**WISCONSIN DEPARTMENT OF
HEALTH AND FAMILY SERVICES
AND JANELL ROBINSON, ESS,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County:
MICHAEL B. BRENNAN, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Rafael A. Rodriguez appeals from an order affirming a decision by the Division of Hearings and Appeals (“Division”) dismissing Rodriguez’s petition challenging Wisconsin’s Department of Health

and Family Services' ("Department") denial of his application for supplemental security income caretaker supplement benefits ("caretaker benefits"). We conclude that the trial court correctly affirmed the Division's decision that Rodriguez was ineligible for caretaker benefits based on his admission that his wife does not receive supplemental security income as statutorily required for him to receive caretaker benefits. *See* WIS. STAT. § 49.775(2) (2007-08).¹ Therefore, we affirm.

¶2 Rodriguez was a Milwaukee County resident receiving supplemental security income. Rodriguez applied for caretaker benefits. The Department denied Rodriguez's application; he challenged the Department's denial. The Division dismissed Rodriguez's challenge on the merits because he was statutorily ineligible to receive caretaker benefits. Rodriguez then sought judicial review of the Division's decision. The trial court affirmed the Division's decision by applying the plain language of WIS. STAT. § 49.775(2) to the undisputed facts. Rodriguez appeals from the trial court's order affirming the Division's decision.

¶3 We review the Division's decision as opposed to the decision of the trial court. *See Kozich v. Employee Trust Funds Bd.*, 203 Wis. 2d 363, 368-69, 553 N.W.2d 830 (Ct. App. 1996). We accept the Division's findings of fact if supported by substantial evidence. *See Von Arx v. Schwarz*, 185 Wis. 2d 645, 656, 517 N.W.2d 540 (Ct. App. 1994). The Division's findings of fact are undisputed. Here, the trial court's analysis was essentially the same as the Division's analysis, although we review the latter.

¹ All references to the Wisconsin Statutes are to the 2007-08 version.

¶4 Rodriguez applied for caretaker benefits. He resides with his wife and their baby daughter. To receive caretaker benefits where both parents reside in the home, both parents must receive supplemental security income, the child must meet certain criteria not at issue here, and the child must not receive supplemental security income in his or her own right. *See* WIS. STAT. § 49.775(2).² Rodriguez admitted that his wife does not receive supplemental security income. Section 49.775(2)(b) expressly requires both custodial parents living in the home with their child to receive supplemental security income as a prerequisite to receiving caretaker benefits. Mrs. Rodriguez does not meet that prerequisite. Therefore, Rodriguez is not eligible for caretaker benefits pursuant to § 49.775(2)(b).

¶5 Rodriguez contends that his wife's eligibility for Medical Assistance renders him eligible for caretaker benefits. The plain language of WIS. STAT. § 49.775(2)(b) expressly provides that "each custodial parent receives supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77, or both." Medical Assistance is not supplemental

² WISCONSIN STAT. § 49.775(2) provides in pertinent part:

(2) SUPPLEMENTAL PAYMENTS. Subject to sub. (3), the department shall make a monthly payment in the amount specified in sub. (4) to a custodial parent for the support of each dependent child of the custodial parent if all of the following conditions are met:

(a) The custodial parent is a recipient of supplemental security income under 42 USC 1381 to 1383c or of state supplemental payments under s. 49.77, or both.

(b) If the dependent child has 2 custodial parents, each custodial parent receives supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77, or both.

security income or state supplemental payments. According to the plain language of § 49.775(2), Rodriguez is not entitled to caretaker benefits.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

