



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/173218

PRELIMINARY RECITALS

Pursuant to a petition filed March 29, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Manitowoc County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on June 07, 2016, at Manitowoc, Wisconsin. DHA previously issued an order on April 4, 2016 dismissing the matter after receiving a signed withdrawal form from the Petitioner on March 30, 2016. On April 25, 2016, the Petitioner filed a request for a re-hearing. The request was granted on April 28, 2016 and the case was scheduled for a hearing. Post-hearing, the record was held open for the agency to submit additional case comments and relevant FS policies. The agency submitted those documents on June 7, 2016 and the record was closed.

The issue for determination is whether the agency properly processed the Petitioner’s FS case.

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:

Manitowoc County Department of Human Services  
3733 Dewey Street  
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County. Petitioner and [REDACTED] have two children in common.
2. On January 13, 2016, the agency issued a Notice of Decision to the Petitioner informing him that his FS renewal had been completed and he was approved to receive \$183/month in FS benefits effective February 1, 2016. The notice informed him that the determination of his benefits was based on his report of a household size of one, gross household income of \$816.78/month from SSI, rent of \$500/month and utility expenses. The notice further informed him of the requirement to report to the agency within 10 days if anyone moved in or out of his house. (Exhibit 2).
3. On January 15, 2016 and February 15, 2016, the agency issued FS benefits of \$183/month to the Petitioner's FS card. (Exhibit #7).
4. On March 8, 2016, [REDACTED] submitted a Six Month Report Form (SMRF) to the agency regarding her FS case. She reported that she resided at the Petitioner's address. She reported herself and the two children in her household. The agency pended the Petitioner's case and [REDACTED] case for verification of household composition. (Exhibit 18 and testimony of [REDACTED]).
5. On March 9, 2016, the agency issued a Notice of Proof Needed to the Petitioner and to [REDACTED] requesting verification of household composition and verification of rent expense. The notice indicated that verification of household composition that would be acceptable included a lease agreement, statement from landlord or affidavit. The verification was due on March 18, 2016. (Exhibits 3 and 14).
6. On March 10, 2016, [REDACTED] contacted the agency about her FS case. The worker explained that the Petitioner, [REDACTED] and the two children must be in the same FS case and that there must be a decision to close one of their cases. [REDACTED] indicated that she understood. (Exhibit 1 and testimony of [REDACTED]).
7. On March 14, 2016, the agency added the Petitioner to [REDACTED] FS case and changed the Petitioner's FS request to "no" in order to close his case. (Exhibits 1 and 18 and testimony of [REDACTED]).
8. On March 14, 2016, the agency issued FS benefits of \$362 to [REDACTED] FS card. (Exhibit #6).
9. On March 15, 2016, the agency issued FS benefits of \$183 to the Petitioner's FS card (Exhibit #7).
10. On March 15, 2016, the agency issued a Notice of Decision to [REDACTED] at the Petitioner's address informing her that for March, 2016, she would receive FS benefits of \$362 for herself and her two children. It informed her that effective April 1, 2016, she would receive FS benefits of \$429/month for herself, Petitioner and their two children. It also stated that the Petitioner did not receive FS benefits as part of [REDACTED] case for March, 2016 because he had received FS benefits for March, 2016 as part of his own case. (Exhibit #10).
11. On March 18, 2016, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would end on April 1, 2016 because "you did not ask for this benefit." (Exhibit 4).
12. On March 23, 2016, the Petitioner contacted the agency to inquire why his FS case had closed. Case comments state: "[REDACTED] called to see why his case was closed. I explained he is living with his children and their mother so this case was closed and we added him to her case. He understood. But does not like the fact that the FS is being reduced." (Exhibit 18).
13. On March 24, 2016, the Petitioner contacted the agency. Case comments state: "[REDACTED] called and was very upset that he was added to the mother of his children's case. He said that he received a

document stating that he is no longer requesting FS which he states is untrue and a false statement. I let him know that this is the notice generated when we close a case and add someone to another case. He said they are separate eating units and don't share any food. I let him know I understand, but let him know about the FS policy (3.3.1.3 Relationship Rules). He fits Example 2. . . Example 2: Sue divorced Bob but they continue to live together. Since they state that they do not purchase and prepare meals together, they are allowed to be separate food units. If Sue and Bob had children in common, relationship rules would require that they be in the same food unit, even if they were no longer married and claimed to purchase and prepare separately. I explained this to him and he said he is going to file a fair hearing. He said we had no right to shut off his FS and wanted it the way it was. I apologized and let him know we could not change it to the way it was because it was FS policy. He said he will be filing a fair hearing anyway and stated that policies are meant to be contested. Let him know if he has any further questions to let us know." (Exhibit #18).

14. On March 30, 2016, the agency contacted the Petitioner. Case comments state: "Called [REDACTED] and discussed the fair hearing request. Explained why his case closed. Discussed the April Foodshare allotment for April on [REDACTED] case is passing for [REDACTED], [REDACTED] and the two children with no shelter expense. Left a copy of the fair hearing withdrawal form at the front desk per [REDACTED]'s request. [REDACTED] stated he would turn in verification of shelter expenses when he picked up the withdrawal form." (Exhibit #18).
15. On March 31, 2016, the Petitioner's FS case was closed. (Exhibit #1).
16. On March 31, 2016, the agency issued a FS supplement of \$177 to [REDACTED] FS card. (Exhibits #6 and #12). The agency also issued a Notice of Decision to [REDACTED] informing her that her FS allotment would be \$606/month effective May 1, 2016. This was based on a household composition of four including [REDACTED], [REDACTED], the Petitioner and their two children. (Exhibit #11).
17. On April 1, 2016, the Petitioner submitted two rent receipts to the agency showing rent of \$250 paid by the Petitioner on March 1, 2016 and rent of \$250 paid by [REDACTED] on March 1, 2016. (Exhibit #5).
18. On April 8, 2016, the agency issued FS benefits of \$429 to [REDACTED] FS card. On May 8, 2016, the agency issued FS benefits of \$606 to [REDACTED] FS card. (Exhibit #6).
19. On April 19, 2016, the Petitioner contacted the agency. Case comments state: "[REDACTED] phoned and demanded workers ID number and name. He is not happy about his ex-wife moving in and being able to become PP and he was added to her case [REDACTED]. This was done because children have HC on the other case and this case open for FS only. After ranting and blaming fraud, worker finally gets thru to him that nothing can be done on CCA and offered to mail another fair hearing form and he agrees as he withdrew last one." (Exhibit #18).
20. On April 19, 2016, the Petitioner filed a complaint against the agency with the Manitowoc County Sheriff's Department.
21. On April 21, 2016, the agency issued a Notice of Decision to [REDACTED] informing her that her FS benefits would decrease to \$298/month effective June 1, 2016 due to an increase in household income. (Exhibit #13).
22. On May 10, 2016, Petitioner contacted the agency to report that [REDACTED] and his children moved out. He requested a new FS application. (Exhibit #18).
23. On May 11, 2016, the Petitioner filed a FS application and the agency conducted a phone interview with the Petitioner. On May 12, 2016, the Petitioner reported that he has a roommate who purchases and prepares food separately but who will pay half of the \$500/month rent and will contribute to utilities. (Exhibit #18). Petitioner's FS application was approved and his case was opened.

24. On May 24, 2016, the Petitioner contacted the agency regarding his FS allotment. He reported that his roommate is not paying half of the rent. Petitioner's case was updated with rent expense of \$500/month. (Exhibit #18).

### DISCUSSION

The primary issue raised by the Petitioner at the hearing was the agency's action in closing his FS case when it added him to ██████████ FS case. Specifically, the Petitioner takes issue with the agency's Notice of Decision dated March 18, 2016 which informed the Petitioner that his FS case would close on March 31, 2016 and gave the reason "you did not ask for this benefit." The Petitioner further takes issue with the agency's action in adding him to ██████████ case rather than adding ██████████ and their children to his FS case. In addition, the Petitioner disputes the agency's determination that he was required to be in the same food unit with ██████████ and their children.

The U.S. Department of Agriculture Food and Nutrition Service (FNS) is responsible for setting the basic program rules for the Supplemental Nutrition Assistance Program (SNAP) so they are similar everywhere in the country. The Wisconsin Department of Health Services (DHS) administers the state's SNAP program, called FoodShare. Government income maintenance (IM) workers at county/tribal human or social service agencies (local IM agencies) determine eligibility for FoodShare benefits and are responsible for issuing benefits. FoodShare Handbook (FSH), § 1.1.1. See also 7 CFR 273.1(a).

Household composition affects an applicant/recipient's eligibility and allotment of FS benefits. Recipients are required to report any changes in their household composition within 10 days. Any change that becomes known to the agency must be acted on by the agency. FSH, § 6.1.1.2. Whenever household composition is questionable, agency workers are required to verify members of a recipient's household. FSH, § 1.2.3.7. The recipient/applicant has primary responsibility for providing required verification and for resolving any discrepancies or questionable information. FSH, § 1.2.1.3. If a recipient fails to provide requested verification by the due date, the agency worker can make a determination based on the best available information. FSH, § 1.2.1.2. The agency worker must document attempts to obtain verification and the reason(s) for making a determination if verification is not obtained. *Id.* Failure to provide requested verification can also result in closure of a recipient's FS case. *Id.*

FS regulations require certain individuals to be included in the same food unit for purposes of determining eligibility and allotment of FS benefits, even if they do not purchase and prepare meals together. Specifically, the following must be included in the same food unit:

1. Spouses,
2. Biological (unless no longer a parent because of adoption), adoptive, or stepparents and their children under the age of 22, and
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

FSH, § 3.3.1.3.

That section of the FSH also includes examples to assist workers in making determinations regarding the appropriate food unit.

Example 1: Tim and Jane are unmarried and live together. They claim separate food unit status. Jane comes into the office and reports she had a baby. If Tim is the father, he is in the food unit with Jane and the baby.

If Tim is not the father, determine if he is participating in parental decisions that affect the baby. If yes, include Tim in Jane's and the baby's food unit since he is providing parental control. If no, Tim is a separate food unit.

Example 2: Sue divorced Bob, but they continue to live together. Since they state that they do not purchase and prepare meals together, they are allowed to be separate food units.

If Sue and Bob had children in common, relationship rules would require that they be in the same food unit, even if they were no longer married and claimed to purchase and prepare separately.

Id.

There is an exception to the rules for including those individuals in the same food unit for individuals and their spouses who are elderly *and* disabled. Individuals who are elderly *and* disabled may be a separate food unit from spouses, even if they are living and eating with others. Id. In those cases, FSH, § 5.2.1 applies. It is noted that this provision that allows separate food units for individuals and their spouses does not allow elderly and disabled individuals to be a separate food unit from children under 22 years of age who reside with their parent. Id.

Another example is included in the FSH to assist workers with the exception provision:

Example 3: Stella, who is over 60 years old and disabled, allows her 19 year old daughter Gracie to move in with her. Although Stella and Gracie claim to purchase and prepare separately, they must be included in the same food unit because elderly persons may not be separated from their children who are under 22 years of age.

With regard to separate food units for elderly and disabled individuals and their spouses, a separate food unit is allowed only when all of the following criteria are met:

1. The individual is age 60 or older;
2. The individual cannot purchase and prepare his or her own meals because of either:
  - a. A disability the SSA considers permanent, or
  - b. Some other permanent physical or mental non disease-related, severe, permanent disability; and
3. The gross monthly income of all other persons with whom the individual (and spouse, if any) resides with does not exceed 165% of the FPL for the number of others in the household. When computing gross income to compare to the 165% FPL, do not include any income of the individual or his or her spouse.

FSH, § 5.2.1.

With regard to the agency action in determining that the Petitioner, [REDACTED] and their children were required to be in the same food unit, I conclude that the agency made a proper determination. The Petitioner asserts that he falls within the exception in FSH § 3.3.1.3 because he is disabled. Though the agency concedes that the Petitioner is disabled, the FS regulations required that an individual also be elderly and meet the income criteria noted in FSH, § 5.2.1 above. The Petitioner is not elderly and therefore does not meet the criteria. Based on the evidence and the regulations noted above, I conclude that the Petitioner, [REDACTED] and their two children were required to be in the same food unit when they were residing together.

With regard to the agency action in closing the Petitioner's case and adding him to [REDACTED] case, there is no guidance in the FS regulations concerning which case should close in these circumstances. The agency worker testified that [REDACTED] was asked which case to close during the phone contact on March 10, 2016 but there was no specific answer to the question. The agency worker also testified that the agency determined that it would be easier from an administrative standpoint to close the Petitioner's case and add him to [REDACTED] case because [REDACTED] case included healthcare benefits for the two children. Closing [REDACTED] case would have involved transferring the healthcare benefits for the children to the Petitioner's case.

I conclude that the agency's action in closing the Petitioner's case after adding him to [REDACTED] case did not result in negative consequences to the Petitioner. He was required to be in the same food unit as [REDACTED] and the children. He continued to receive FS benefits without any break in benefits but received them as part of [REDACTED] case instead of his own case. I agree with the Petitioner that the agency could have contacted him to try to get an agreement on which FS case the Petitioner and [REDACTED] preferred to close. The agency also could have accommodated the Petitioner's concern by either re-opening his case and adding [REDACTED] and the children or providing the Petitioner with his own FS card as part of [REDACTED] case. However, I do not find that the agency erred or failed to properly follow FS regulations when it closed the Petitioner's case after adding him to [REDACTED] case.

Finally, I do not find that the agency issued a fraudulent or false document to the Petitioner when it issued the March 18, 2016 notice to the Petitioner indicating that his FS case would close because he "did not ask for the benefit." It was explained to the Petitioner that the notices are templates and the worker was required to check "no" to FS benefits in order to close his case when he was added to [REDACTED] case. The template notice was thus generated. It is unclear what remedy the Petitioner seeks with regard to his assertion of the agency issuing this document since he remained eligible for FS benefits at all times relevant to this matter. I do not find that the agency erred in issuing the March 18, 2016 notice to the Petitioner or that it was a fraudulent action on the part of the agency or any of its workers.

### CONCLUSIONS OF LAW

The agency properly processed the Petitioner's FS case.

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

That 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 Milwaukee,  
Wisconsin, this 10th day of June, 2016

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\sDebra Bursinger  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 10, 2016.

Manitowoc County Department of Human Services  
Division of Health Care Access and Accountability