



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOO - 175163

PRELIMINARY RECITALS

Pursuant to a petition filed on June 24, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS). The hearing was held on July 14, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly refused to remove the petitioner's daughter and niece from her FoodShare (FS) household.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On June 24, 2016 the petitioner asked that her daughter, D., be removed from her FS case. D. is 18. The petitioner stated that D. had moved out of her house. At the hearing the petitioner

maintained that her daughter had moved out of her home. The record remained open for the petitioner to present a copy of a lease for her daughter’s apartment. She never provided this document.

3. The petitioner further requested that her niece, K., be removed from her FS household. The petitioner’s niece K. is placed in her home pursuant to a CHIPS order. The agency confirmed with the niece’s case manager that the petitioner’s niece was still placed with her pursuant to a CHIPS order. At the hearing the petitioner testified that her niece was having more home visits, but that the child was still placed with her pursuant to the CHIPS order.
4. The agency included the petitioner’s daughter and niece on her FS case in June and July 2016.
5. On June 24, 2016 the Division of Hearings and Appeals received the petitioner’s Request for Fair Hearing.

DISCUSSION

The federal FS regulations define FS household composition as follows:

(a) General household definition. A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a). The generic household definition requires that household members “live together” and “purchase and prepare” meals together. This definition does not solve the problem posed by this case, because the children live with, and eat with, both of their divorced parents.

Another federal regulation is in 7 C.F.R. §273.1(c) and is an authorization to the state agencies to create policies to answer questions pertinent to household composition issues:

(c) Unregulated situations. For situations that are not clearly addressed by the provisions of paragraphs (a) and (b) of this section, the State agency may apply its own policy for determining when an individual is a separate household or a member of another household if the policy is applied fairly, equitably and consistently throughout the State.

In Wisconsin, the state agency has developed policy standards to determine FS household composition. The policy states that:

The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

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.

Wisconsin FoodShare Handbook, § 3.3.1.3.

The only contested issue for this appeal is whether the agency should be including the petitioner’s 18 year old daughter and niece in her FS household. Both the petitioner’s daughter and niece receive unearned income each month. Removing these individuals from the petitioner’s household, would remove income from the household, and increase the petitioner’s monthly FS benefits.

The petitioner has provided no verification that her daughter and niece are no longer living with her. She states that they are not living with her; however, the CHIPS order states that her niece is living with her, and the petitioner never provided a lease showing that her daughter has her own apartment. I agree with the agency’s actions based on the evidence presented. The petitioner may report at any point that these individuals are not living with her. If she provides the proper verification, the agency will likely remove these individuals from her FS case. If this becomes a contested issue, the petitioner may always file a new Request for Fair Hearing based on the new action.

CONCLUSIONS OF LAW

The agency correctly refused to remove the petitioner’s daughter and niece from her FoodShare (FS) household.

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, **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 29th day of July, 2016

\s _____
Corinne Balter
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 July 29, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability