



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/142880

PRELIMINARY RECITALS

Pursuant to a petition filed August 04, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 4, 2012, at Appleton, Wisconsin. The hearing record was held open for 7 days for a submission from the petitioner, which was received.

The issue for determination is whether the agency correctly discontinued the petitioner's FS effective August 1, 2012, due to excess income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Shena Smith, ES Spec.

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911 -5985

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Prior to August, 2012, the petitioner had an open FS case as a household of four persons. Her case underwent a periodic review on July 2, 2012, and all requested verification was subsequently

received. The agency budgeted the income of the petitioner, her children's child support, and the earned income of [REDACTED] [REDACTED]. The resulting total income exceeded the income limit for a household of four persons. On July 20, 2012, the agency issued written notice to the petitioner advising that her FS was being discontinued effective August 1, 2012.

3. Mr. [REDACTED] is not the father of the petitioner's children. He has earned income from Home Depot of \$778.65 biweekly.
4. In late July 2012, the petitioner reported to the agency that [REDACTED] does not eat, purchase or prepare food with the other household members. She asserts that he stores his food separately in his own "downstairs" refrigerator.
5. Post-hearing, the petitioner supplied a written statement from [REDACTED] in which he declares that he pays the petitioner \$350 in monthly rent, and that he incurs and pays a \$120 average monthly grocery expense that is separate from the rest of the household.

DISCUSSION

When two adults reside together and share food, the federal regulations require that they be treated as one FS household. 7 C.F.R. §273.1(b); *FoodShare Wisconsin Handbook*, (FSWH), 3.3.1.2. The agency contends that the petitioner and Mr. [REDACTED] resided together and shared food from at least 2011 to the present.

The federal FS rule on household composition reads 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.**
- (b) *Special household requirements*. --(1) Required household combinations. The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified:
- (i) Spouses;
 - (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and
 - (iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child must be considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult.

(emphasis added)

7 C.F.R. §273.1(a),(b). See also, *FS Wisconsin Handbook* (FSWH), § 3.3.1.2 - .3, viewable at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

The petitioner agrees that she and [REDACTED] have lived together from at least 2011 to the present. The amount of his income is not in dispute. The petitioner argues, however, that she and [REDACTED] have not been sharing food. In light of the petitioner's statement to the agency in July regarding not sharing food, her statement at hearing that they were not and are not sharing food, and the post-hearing submission from [REDACTED] that they are not sharing food, I must conclude that they have not been sharing food from at least August 1, 2012, forward. Thus, the agency's August 1, 2012, discontinuance may have been incorrect, depending on a re-computation of the household income.

CONCLUSIONS OF LAW

1. [REDACTED] [REDACTED] should not have been included in the petitioner's FS household from August 1, 2012, forward. A redetermination of FS eligibility for the petitioner's household (now three persons) is needed.

THEREFORE, it is

ORDERED

That the petition is remanded to the county agency with instructions to remove [REDACTED] [REDACTED] from the petitioner's FS household effective August 1, 2012, and to redetermine her household's FS eligibility from August 2012, forward. These actions shall be taken within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 21st day of September, 2012

Nancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals

c: Outagamie County Department of Human Services - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
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 September 21, 2012.

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