



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

FOO/143104

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 9, 2012, at Madison, Wisconsin.

The issue for determination is whether the county agency correctly discontinued the petitioner's FS benefits effective August 1, 2012.

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: Ms. B. Hield, ES Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Prior to August, 2012, the petitioner had an ongoing FS case as a household of two persons (self and her minor child). The petitioner's case was due for a periodic review in July 2012. On July 18, 2012, the Department issued written notice to the petitioner advising that her FS would be

discontinued effective August 1 if she did not complete a review by July 31. The petitioner submitted an online review form on July 30, and underwent a telephone interview on July 31.

3. During the July 31 interview, the petitioner stated that she lives in a co-op ([REDACTED]) and that all residents share food. Each resident pays \$100 monthly toward communal food, and one person has been tasked with doing the grocery shopping. The co-op has more than 30 residents.
4. The co-op does not purchase meat or Monsanto products. Because the petitioner desires to feed her child meat, she needs to supplement the food supplied by the co-op.
5. On August 1, 2012, the Department issued written notice to the petitioner advising that her FS had been discontinued effective August 1, 2012. The reason given for denial was not particularly clear, as the Department does not have a computer code that captures the problem in this case. The Department's discontinuance rationale was that the petitioner and her son were nonfinancially ineligible, because they are not in an "eligible living arrangement."

DISCUSSION

To qualify for FS, a person must be both nonfinancially and financially eligible. In determining a household's FS eligibility, the Department must determine FS household composition. The Department's policy instruction, which is aligned with the federal rule, is that persons who live together and share food are in one FS household:

3.3.1.1 HUG (Households, Units, Groups)

To determine who is nonfinancially eligible for FoodShare, you must start with all household members.

H - Households:

Households consist of all persons living in or temporarily absent from the same **residence**. It is important to enter all household members into **CARES** to ensure that the correct eligibility determination is made.

U - Food Units:

One or more persons who live in the same household and purchase and prepare food together for home consumption. This group is tested for eligibility together. There are some exceptions for boarders, foster persons, and certain elderly and disabled individuals.

Examples

Examples of a food unit include:

1. A person living alone.
2. A group of persons living together who purchase and prepare meals together for home consumption. ...

Purchase and Prepare

People living together who:

1. Share in the cost of purchasing food.
2. Share in the preparation of food.
3. Eat together.

Each person does not have to shop, provide money, prepare food, and eat together. Any of those activities is sufficient to include a member in purchasing and preparing food with the group.

FoodShare Wisconsin Handbook (FSWH), §3.3.1, at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. See in accord, 7 C.F.R. § 273.1(a),(b). Thus, the petitioner is in one FS household with all of her other co-op members because they reside in the same place and share food. The petitioner would have to file a new FS application listing all members living at the co-op.

In addition, the federal rules do not allow a person to receive FS if she resides in an “institution.” The rule goes on to define an institution, for this purpose, as an entity that provides the applicant with more than 50 percent of her meals. 7 C.F.R. § 273.1(a)(7)(vi). An exception to this disqualification for being in an “institution,” is available if the co-op could be considered a “group living arrangement.” The Department’s policy also offers the following instructions for group living arrangements:

3.2.1.5 Group Living Arrangement

A group living arrangement is a public or private nonprofit residential setting serving no more than 16 residents. It must be certified by the appropriate state or local agencies. An example may be a Community Based Residential Facility (CBRF ).

Any blind or disabled (3.8.1) resident of a group living arrangement may be eligible.

The resident may purchase meals from the group living arrangement when FNS  authorizes the facility to accept and redeem FS. ...

FSWH, § 3.2.1.5. The policy is aligned with this federal FS regulation:

(f) *Residents of a group living arrangement.* (1) Disabled or blind residents of a group living arrangement (GLA) (as defined in § 271.2 of this chapter) may apply either through use of an authorized representative employed and designated by the group living arrangement or on their own behalf or through an authorized representative of their choice. The GLA must determine if a resident may apply on his or her own behalf based on the resident's physical and mental ability to handle his or her own affairs. Some residents of the GLA may apply on their own behalf while other residents of the same GLA may apply through the GLA's representative. Prior to certifying any residents, the State agency must verify that the GLA is authorized by FNS or is certified by the appropriate agency of the State (as defined in § 271.2 of this chapter) including the agency's determination that the center is a nonprofit organization.

(i) If the residents apply on their own behalf, the household size must be in accordance with the definition in § 273.1. The State agency must certify these residents using the same provisions that apply to all other households. If FNS disqualifies the GLA as an authorized retail food store, the State agency must suspend its authorized representative status for the same time; but residents applying on their own behalf will still be able to participate if otherwise eligible.

(ii) If the residents apply through the use of the GLA's authorized representative, their eligibility must be determined as a one-person household.

...

7 C.F.R. § 273.11(f).

Group living arrangement means a public or private nonprofit residential setting that serves no more than sixteen residents that is certified by the appropriate agency or agencies of the State under regulations issued under section 1616(e) of the Social Security Act or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act. To be eligible for food stamp benefits, a resident of such a group living arrangement must be blind or disabled as defined in paragraphs (2) through (11) of the definition of “Elderly or disabled member” contained in this section.

7 C.F.R. § 271.2. The petitioner’s situation does not fall within the definition of a group living arrangement, so she cannot be FS eligible under that exception.

CONCLUSIONS OF LAW

1. The county agency correctly discontinued the petitioner’s FS effective August 1, 2012.

THEREFORE, it is

ORDERED

That the petition is dismissed.

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 15th day of October, 2012

Nancy J. Gagnon
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 October 15, 2012.

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