



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]

DECISION

FOO/143554

PRELIMINARY RECITALS

Pursuant to a petition filed September 1, 2012 under Wis. Admin. Code § HA 3.03 (September 2001), to review a decision by the Columbia County Health and Human Services Department ["County"] in regard to Food Stamps ["FS"], a Hearing was held via telephone on September 28, 2012. The Hearing in this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: CTS-143556.

The issue for determination is whether it was correct to include petitioner's ex-wife in petitioner's FS household effective August 1, 2012.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Department of Health Services

Room 651

1 West Wilson Street

P.O. Box 7850

Madison, Wisconsin 53707-7850

BY: Wendy Metcalf, ES Supervisor

Carol Bride, ESS

Becky Wegner, ESS

Columbia County Health and Human Services Department

2652 Murphy Road

P.O. Box 136

Portage, Wisconsin 53901

OTHER PERSONS PRESENT:
Gregory Thiele, investigator, O'Brien & Associates
[REDACTED], petitioner's ex-wife

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County, Wisconsin.
2. Petitioner received a notice dated August 17, 2012 entitled *About Your Benefits*; that notice informed petitioner that his FS would be reduced from \$158.00 per month to \$53.00 per month effective August 1, 2012. Exhibit #8.
3. The County reduced petitioner's FS effective August 1, 2012 because it determined that petitioner's ex-wife lived with him and had income. Exhibit #6.
4. Petitioner's ex-wife lived with petitioner in July 2012 but moved out on July 29, 2012 and no longer lived with petitioner after July 29, 2012. Exhibits #1, #2 & #4.

DISCUSSION

For purposes of FS eligibility the income of all members of an FS household is counted. 7 C.F.R. §§ 273.9(a)intro. & (b)intro. (2011); *FoodShare Wisconsin Handbook* ["FWH"] 4.3.1. The County maintains that as of August 1, 2012 petitioner's ex-wife is part of petitioner's FS household and that her income reduces his FS.

The basic definition of a *household* for purposes of FS is 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)(3) (2011); FWH 3.3.1.¹ Spouses must be considered as customarily purchasing food and preparing meals together, even if they do not do so, and thus must be included in the same FS household if they live together. 7 C.F.R. § 273.1(b)(1)(i) (2011); FWH 3.3.1.3.1.

¹ A person under 22 years of age who is living with his or her natural, or adoptive, or step parent must be considered as customarily purchasing food and preparing meals together with his or her parent, even if they do not do so, and thus must be included in the same FS household. 7 C.F.R. § 273.1(b)(1)(ii) (2011); FWH 3.3.1.3.2. Likewise, 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 must be considered as customarily purchasing food and preparing meals together with that person, even if they do not do so, and thus must be included in the same FS household. 7 C.F.R. § 273.1(b)(1)(iii) (2011); FWH 3.3.1.3.3.

This matter must be decided by a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (2001).

Petitioner and his ex-wife testified credibly that they lived together in July 2012 but that petitioner's ex-wife moved out on July 29, 2012 and no longer lived with petitioner after July 29, 2012. They testified that she went to live with her father. In addition, petitioner submitted a copy of a *Motion and Order to Dismiss Motion to Suspend Child Support* dated September 7, 2012 and an *Order* dated September 11, 2102 filed in Columbia County Circuit Court Case number 1111FA000139. That document concerns petitioner and his ex-wife and states, in part, that petitioner and his ex-wife "no longer reside together."

The only evidence the County presented to show that petitioner and his ex-wife lived together after July 29, 2012 was a 1-page investigative report from O'Brien & Associates dated August 2, 2102. Exhibit #6. The only relevant evidence contained in that report are statements made by petitioner's neighbors. First, it is not clear that the persons making those statements were aware that petitioner's ex-wife may have moved-out on July 29, 2012 (the statements were made on August 2, 2012). Second, those statements are hearsay. See, Wis. Stat. § 908.01(3) (2009-10).

In circumstances such as these, when the reliability and probative force of hearsay evidence is suspect and that hearsay evidence is to form the sole basis for a finding of fact, the Wisconsin Supreme Court has held that uncorroborated hearsay does not constitute substantial evidence upon which to base a finding of fact. *Gehin v. Wisconsin Group Ins. Bd.*, 2005 WI 16, ¶¶ 53-56 & 58, 278 Wis. 2d 111, 692 N.W.2d 572; See also, *Williams v. Housing Auth. of City of Milwaukee*, 2010 WI App 14, ¶¶ 14 & 19, 323 Wis. 2d 179, 187 & 189, 779 N.W.2d 185 ["Uncorroborated hearsay evidence, even if admissible, does not by itself constitute substantial evidence."]. In these circumstances the Wisconsin Supreme Court has held that hearsay must be corroborated by nonhearsay evidence. *Gehin*, ¶¶ 82 & 92. There is no nonhearsay evidence in the record of this matter that corroborates the hearsay evidence offered by the County. Therefore, the County has failed to provide sufficient evidence to show that petitioner's ex-wife lived with petitioner on and after August 1 2012. It follows that the County's conclusion that petitioner and his ex-wife lived together on and after August 1, 2012 cannot be sustained and must be reversed.

CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct to include petitioner's ex-wife in petitioner's FS household effective August 1, 2012.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the County, that the County not include petitioner's ex-wife in petitioner's FS household effective August 1, 2012, and that, within 10 days of the date of this *Decision*, the County redetermine petitioner's eligibility for FS retroactive to August 1, 2012 and issue all FS for which petitioner is otherwise eligible retroactive to August 1, 2012.

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 10th day of October, 2012

Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



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 October 10, 2012.

Columbia County Health & Human Services
Division of Health Care Access and Accountability