



FH
[REDACTED]

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

In the Matter of:

[REDACTED]

DECISION

FOO/144025

PRELIMINARY RECITALS

Pursuant to a petition filed September 22, 2012 under Wis. Admin. Code § HA 3.03 (September 2001), to review a decision by the Fond du Lac County Department of Social Services ["County"] in regard to Food Stamps ["FS"], a Hearing was held via telephone on October 24, 2012.

The issue for determination is whether it was correct to include petitioner's mother in petitioner's FS household effective September 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: Deb Gohlke, ESS

Fond du Lac County Department of Social Services

50 North Portage Street

Fond du Lac, Wisconsin 54935

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; age 36 years) is a resident of Fond du Lac County, Wisconsin.
2. Petitioner received a notice dated August 30, 2012 entitled *About Your Benefits*; that notice informed petitioner that his FS would be reduced from \$61.00 per month to \$16.00 per month effective September 1, 2012.
3. The County reduced petitioner's FS effective September 1, 2012 because petitioner's mother lives with him and has income.
4. Petitioner's mother is 57 years old and is disabled (she receives Supplemental Security Income ["SSI"]); petitioner and his mother purchase food and prepare meals together for home consumption.

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 determined that as of September 1, 2012 petitioner's mother was 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.

This matter must be decided by a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (2001). The documentation in the record of this matter is that petitioner assists his mother with all meal preparation and grocery shopping (although she is able to prepare simple meals herself using a microwave). Further, during an August 2012 telephone interview for FS petitioner reported that he cooks all of his mother's meals. On his *Request For Fair Hearing* form petitioner wrote: "she buy [sic] her own food and she prepared her own food . . ." However, in light of all the evidence in the record of this matter it must be concluded that petitioner and his mother purchase food and prepare meals together for home consumption. Therefore, they must be included in the same FS household.

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.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to include petitioner's mother in petitioner's FS household effective September 1, 2012.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 served and 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, 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 5th day of November, 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 November 5, 2012.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability