



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/145182

PRELIMINARY RECITALS

Pursuant to a petition filed November 13, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 18, 2012, at Racine, Wisconsin.

The issue for determination is whether the agency correctly reduced Petitioner's FoodShare allotment by including his 20-year-old daughter and her earnings as part of his FoodShare household.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Kathy Christman

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner filed this appeal to contest a reduction in the amount of his FoodShare benefits effective December 1, 2012. The reduction was from \$308 a month to \$219 month.
3. Petitioner's FoodShare case was subject to a review in October 2012. As part of that review Petitioner submitted verification of earnings for his spouse, himself and his 20-year-old daughter. The daughter is a full-time student and does work more than 20 hours per week.

4. The amount of Petitioner's daughter's income was not disputed and it was the inclusion of that income that led to the FoodShare reduction.

DISCUSSION

The starting point for determination of FoodShare eligibility and allotment levels begins with the determination of who must be included in the FoodShare household. FoodShare regulations require that parents and children under the age of 22 included in the same household:

3.3.1.3 Relationship Rules

7 CFR 273.1(b) (1)

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

1. Spouses and spouses,
2. Biological (unless no longer a parent because of adoption), adoptive, or step-parents 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.

...

FoodShare Wisconsin Handbook (FSH), §3.3.1.3.

Full-time students in postsecondary educational institutions are FoodShare eligible if they work more than 20 hours a week. *See FSH, §3.15.1.*

Here Petitioner's daughter is under age 22, is a full-time student and does work more than 20 hours a week. As such she is included in Petitioner's FoodShare household. Her income is counted. Thus the agency acted correctly in including her and her income in determining the household's FoodShare allotment level.

As additional information for Petitioner, FoodShare eligibility and the allotment level for an eligible household is computed as follows.

A household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

Once a household passes the gross income test the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$160 per month for a household of 4 persons, *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction - the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).* There is a cap of \$459.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.1 and 8.1.3.*

CONCLUSIONS OF LAW

That the agency correctly included Petitioner's daughter and her income as part of his FoodShare household thereby resulting in a reduction of Petitioner's FoodShare allotment.

THEREFORE, it is

ORDERED

That this appeal 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 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 Milwaukee,
Wisconsin, this 7th day of January, 2013

\sDavid D. Fleming
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 January 7, 2013.

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