FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOO/145300

PRELIMINARY RECITALS

Pursuant to a petition filed November 16, 2012, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Columbia County Health & Human Services to discontinue FoodShare benefits (FS), a hearing was held on December 19, 2012, at Portage, Wisconsin.

The issue for determination is whether the agency correctly determined that the father of petitioner's younger child must be included in her FS household.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Petitioner's Representative:

Atty. Hal Menendez
Legal Action of Wisconsin, Inc.
31 South Mills Street
Madison, WI 53715

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Jeanette Gessner
Columbia County Health & Human Services
P.O. Box 136
Portage, WI 53901

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Columbia County who received FS until the actions described below.

2. Since 2008 petitioner has lived with her now 15-year-old son in a home owned by E.T. E.T. is not the older son's father. On February 25, 2012, petitioner gave birth to N.T. Although she reported the birth of the child she did not clearly report that his father was in the home.

3. In August, 2012, petitioner did a review. In the review she noted that E.T. was N.T.'s father and was in the home. The agency requested E.T.'s employment information, which was not provided. The agency then closed FS effective September 1 because information was not provided.

4. On August 23, 2012, petitioner reported that E.T. left the home on that date. The agency then reopened FS for a three-person household and issued $526 FS for September. The agency also requested that O'Brien and Associates investigate the situati on.

5. On September 2, 2012, the investigator went to the home. A number of people were present doing work on the home. E.T. was present and told the investigator that he lived in the home.

6. The agency again requested E.T.'s income verification with a due da te of September 14, 2012. When the verification was not received the agency closed FS effective October 1, 2012, by a notice dated September 18, 2012. Petitioner did not request assistance to obtain the verification.

DISCUSSION

The federal FS regulations define FS household composition 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.

7 C.F.R. §273.1(a). FS rules provide further as follows:

> 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.

7 C.F.R. §273.1(b)(1); see also FS Handbook, Appendix 3.3.1.2.

Under the federal law, if both petitioner and E.T. live with their child in common, they have to be included together in the FS household.

An FS recipient is required to verify information that can affect eligibility. 7 C.F.R. §273.2(f). If the household fails to verify required information by the time limit, the agency may deny the benefits. 7 C.F.R. §273.14(g)(3); FS Handbook, Appendix 1.2.1.2. The agency should assist the applicant if she requests assistance. FS Handbook, App. 1.2.1.3.

The issue is whether E.T. remained in the home when the agency took the action to request verification and subsequently close petitioner's FS. I conclude that based upon the information in the agency's record at the time, the action was correct.

On September 2, 2012, E.T. himself told the investigator that he lived in the home that he owned. Petitioner argues that statement to be hearsay, but I find that it is reliable as being supported by other evidence (in particular E.T.'s presence at the home that day, that he owns the home, that petitioner acknowledged E.T.'s statement during the hearing, and that no alternative, verifiable residence was provided), and that it in essence is a statement against his own interest. While a statement against interest typically can be used only if the person is unavailable to testify under Wis. Stat., §908.045(4), in this case neither side called E.T. as a witness nor explained his absence. I conclude that his presence, at least as of September, 2012, was sufficiently established.

With E.T.'s presence established, the agency correctly sought h is income verification and subsequently closed the case when it was not provided.

Petitioner must reapply for FS (and it was mentioned during the hearing that she had done so). At this point the only proof that E.T. is not living in the home is petitione r's assertion. The agency would have every right to request additional verification, not the least of which would be an affirmative statement from E.T. that he is living elsewhere.

CONCLUSIONS OF LAW

The agency correctly closed petitioner's FS for failure to verify because the best evidence in its possession was that the father of petitioner's younger child lived in the same home as petitioner and the child.

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 7th day of January, 2013

_____

\sBrian C. Schneider
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.

Columbia County Health & Human Services
Division of Health Care Access and Accountability
ham@legalaction.org