



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/145401

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 21, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on January 3, 2013, at Janesville, Wisconsin. With the petitioner's consent, the hearing record was held open for 7 days for production of paternity-related documentation.

The issue for determination is whether the county agency correctly discontinued the petitioner's FS coverage effective December 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  
Madison, Wisconsin 53703

By: Pam Edmonds, ES Supr.

Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.

2. Prior to December 2012, the petitioner and his minor son, DL, received FS as a household of two persons. The agency undertook an investigation of the petitioner's residential status in October 2012, and concluded that the petitioner and DL were living in [REDACTED] rather than in Rock County, Wisconsin.
3. On October 22, 2012, the agency issued written notice to the petitioner advising that FS coverage for the household was being discontinued effective December 1, 2012. See, Exhibit 2. The basis for discontinuance was that they were not residing in Wisconsin.
4. From at least October 2012 through the date of hearing, DL was residing at [REDACTED]. DL lives at that address with the petitioner's girlfriend, and the child attends [REDACTED] School in [REDACTED].
5. The petitioner lives at [REDACTED] with his parents. He is unemployed, and spends a minority of his time at his girlfriend's residence in Illinois. The petitioner has no children-in-common with his girlfriend.

### DISCUSSION

In order to receive FS through Wisconsin, the petitioner and his child must be residents of Wisconsin. *FoodShare Wisconsin Handbook*, § 3.2.1.

The preponderance of the credible evidence establishes that the child DL lives at [REDACTED], with the petitioner's girlfriend. He is apparently living there so that he may attend a better school. The petitioner's reason for having the child live in Illinois may be laudable, but it does not change the fact that the child lives in Illinois. Because the child lives in Illinois, he cannot get FS from Wisconsin.

Determining the petitioner's residence is a closer call. The petitioner testified that he lives with his parents at [REDACTED]. He is not employed, so there is no employer "address check" available for corroboration. No "paper corroboration" (e.g., driver's license address, vehicle registration address, postmaster check, voter registration, police reports) was offered by the agency's contract investigator to support his conclusion that the petitioner lives with his girlfriend in Illinois. The investigator did testify to his conversations with several neighbors of the girlfriend, [REDACTED]. They indicated that a man named [REDACTED] was often present at her residence, as well as the child DL.

The petitioner admits visiting his girlfriend several times a week. He has no child-in-common with her, which was confirmed by the agency post-hearing. He noted that his girlfriend has also been involved with his cousin, [REDACTED]. [REDACTED] keeps some of his personal items at the girlfriends' residence, visits there frequently, and is the adjudicated father of two of her children. The agency's post-hearing corroboration of the children's paternity is enough to persuade me that the agency not met its burden of proving that the petitioner lives with his girlfriend in Illinois.

### CONCLUSIONS OF LAW

1. The county agency correctly discontinued FS for the child DL, because he is not residing in Wisconsin.
2. The county agency incorrectly discontinued FS for the petitioner, because he is residing in Wisconsin.

**THEREFORE, it is**

**ORDERED**

That the petition is *remanded* to the agency with instructions to re-open, for the petitioner only, FS from December 1, 2012, forward. This action shall be taken within 10 days of the date of this Decision. In all other respects, 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 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 22nd day of January, 2013

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\sNancy 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 January 22, 2013.

Rock County Department of Social Services  
Division of Health Care Access and Accountability