



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/146609

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Juneau County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on February 21, 2013. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: BCS-146610.

The issue for determination is whether it was correct to include petitioner's boyfriend in petitioner's FS household.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: April Lee, ESS

Juneau County Department of Human Services
Courthouse Annex
220 E. LaCrosse Street
Mauston, WI 53948

OTHER PERSONS PRESENT:

[REDACTED], petitioner's boyfriend
Gregory Thiele, Investigator, O'Brien & Associates

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Juneau County.
2. Petitioner has a boyfriend ["EEG"]: petitioner and EEG have a minor child in common ("LKG"; female; age 1 year); they have been in a relationship for 3 years.
3. EEG has earned income; the County included EEG in petitioner's FS household because petitioner and EEG live together.
4. The County discontinued petitioner's FS effective November 30, 2012 because EEG's income put petitioner over the FS income limit.

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 EEG is part of petitioner's FS household and that his income put petitioner over the FS income limit.

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).

Petitioner and EEG testified that they did not live together. They testified that petitioner lived in her mother's house and that EEG lived in a house that was owned by his father (both in the same small town). They testified that they stay at each other's house on occasion but that they do not "live together". Petitioner produced numerous documents to show that she and EEG have different addresses.² However, the County does not deny that they have different addresses. The County claims that they live together and go back and forth between the 2 houses. The County basis this claim on admissions made by petitioner to the County worker and by admissions made by petitioner, by EEG, and by petitioner's mother to an investigator from *O'Brien & Associate*. Petitioner and EEG deny that they made those

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.

² A letter from EEG's father; a *2012 W-2 Wage and Tax Statement*; a paycheck stub from EEG's employer; a 2012 tax Form 1099-R; a *US Cellular* bill; a *Wisconsin Certificate of Vehicle Registration*; an *Alliant Energy* bill; a *Wisconsin License Plate Renewal Notice*; another *Wisconsin Certificate of Vehicle Registration*; a *Wisconsin Certificate of Title*; a *Wisconsin Department of Workforce Development* ["DWD"] *Information and Instructions About Your Claim* letter; a *Capitol One* credit card bill; a *dish Network* letter; a *DWD Claim Confirmation and Instructions* letter; a *Stipulation & Order For Support* filed in Juneau County Circuit Court on January 25, 2012.

admissions. This is not credible. Petitioner and EEG admit that they have been in a relationship for 3 years, have a child in common, and stay with each other at least “on occasion.” The preponderance of the credible evidence in the record of this matter is that petitioner and EEG live together as claimed by the County. It follows that the County’s conclusion that petitioner and EEG live together must be sustained.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to include petitioner’s boyfriend (EEG) in petitioner’s FS household.

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 4th day of March, 2013

Sean P. Maloney
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 March 4, 2013.

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