



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148149

PRELIMINARY RECITALS

Pursuant to a petition filed March 20, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on April 17, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner's FS case effective April 1, 2013, due to excess income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: N. Yang, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Prior to April 2013, the petitioner had an ongoing FS case for two persons (self and son TJL). On March 11, 2013, the Department issued written notice to the petitioner advising that her FS would be discontinued effective April 1, 2013. The basis for discontinuance was excess household

income, following the addition of a third household member, her 20-year old daughter TRL. The petitioner appealed and aid was continued pending appeal.

3. The petitioner's child TRL resides with her. TRL has gross earned income of \$893.40 monthly. The other monthly income in the household is the petitioner's \$1,075 in Unemployment Compensation (UC) and the other child's Social Security of \$465. Their rent is \$500. Net adjusted income for this household was \$2,105.72, which makes them ineligible for any amount of FS. The net income limit for a group of three persons is currently \$1,591.

DISCUSSION

Because they reside together and share food, the petitioner, her under-22 child TRL and her under-22 child TJL were correctly placed in the same FS household by the Department. The policy states:

3.3.1 Food Unit/Food Group/Relationships

...

Households consist of all persons living in or temporarily absent from the same **residence** [Such] persons who live in the same household and purchase and prepare food together for home consumption [are a food unit]. This group is tested for eligibility together. There are some exceptions for boarders, foster persons, and certain elderly and disabled individuals.

Examples

Examples of a food unit include:

1. A person living alone.
2. A group of persons living together who purchase and prepare meals together for home consumption.
3. A person (or group of persons) living with others, but who usually purchases and prepares food for home consumption separately from the others.

FoodShare Wisconsin Handbook (FSWH), §3.3.1, at <http://www.emhandbooks.wisconsin.gov/fsh>.

The federal FS rule goes on to state that persons living in the same dwelling **MUST** be treated as being in the same FS household (whether they eat together or not), if they are parents, step-parents, and a child under the age of 22:

*(b) Special household requirements.--(1) Required household combinations. 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. A child must be considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult.*

(emphasis added)

7 C.F.R. §273.1(b).

Thus, the petitioner's child TRL, age 20, must have her parent and sibling included in her FS household. This results in a household of three persons for April 2013. TRL's income must be included, as she is a household member who is at least age 18. Earned income is included in the FS allotment calculation unless specifically excluded; the only applicable exclusion here is for earnings of children under age 18. *FSWH*, § 4.3.2.2. Inclusion of her income put the household over the income limit for FS benefits.

The petitioner argued that TRL does not contribute towards household expenses with her earnings. This may be true, but it is irrelevant to the outcome here.

CONCLUSIONS OF LAW

1. The Department correctly discontinued the petitioner's FS effective April 1, 2013, due to excess income.

THEREFORE, it is

ORDERED

That 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 7th day of May, 2013

\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 May 7, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability