



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148332

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 22, 2013, at Appleton, Wisconsin.

The issue for determination is whether the Department erred in not including petitioner's son in her food unit until April 1, 2013.

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: Debbie Glaudemans

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner has a male minor child. The father of this child is [REDACTED] [REDACTED].
3. On June 5, 2012, [REDACTED] and petitioner appeared in circuit court and petitioner was granted physical placement of the child if the two are not living together.

4. The couple separated and ceased living together in August 2012.
5. █████ and petitioner were not living together in October 2012 at which time █████ applied for FoodShare. The agency included the child in █████'s food unit.
6. Petitioner applied for FS on January 21, 2013. FS was approved for petitioner and denied for the child as the child was already on █████'s case.
7. The agency requested documentation reflecting placement. Petitioner provided the agency with a child support order on March 8, 2013 which indicated physical placement with petitioner and limited visitation for █████. The agency then removed the child from █████'s case and included him on petitioner's case.
8. Petitioner filed this appeal seeking retroactive benefits.

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). The generic household definition requires that household members “live together” and “purchase and prepare” meals together. This definition does not solve the problem posed by this case, because the child lives with, and eats with, both of her parents.

The only other relevant instruction offered by the federal regulation is in 7 C.F.R. §273.1(c) and is an authorization to the state agencies to create policies to answer questions pertinent to household composition issues:

(c) *Unregulated situations.* For situations that are not clearly addressed by the provisions of paragraphs (a) and (b) of this section, the State agency may apply its own policy for determining when an individual is a separate household or a member of another household if the policy is applied fairly, equitably and consistently throughout the State.

In Wisconsin, the state agency has developed policy standards to determine FS household composition in cases involving children in joint custody. The policy is clear in requiring that the child cannot be a member of more than one FS group in the same month. See the FoodShare Wisconsin Handbook, §3.4.1. State policy also determines the assignment of a joint custody child to a specific household:

Children are included in the household where they reside when they are under the care and control of a parent a person's biological, step, or adoptive mother or father regardless of age. Parenthood doesn't have to be verified or other caretaker in that household. There may be situations when the residence of a child a person's biological, step, or adopted son or daughter, regardless of age, is not easily determined. There are many methods that can be used to determine the child's residence. If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50 custody split. If one parent is not

designated as primary caretaker, the parents can be asked to decide. **Individuals can only be included in one food unit.**

FoodShare Wisconsin Handbook, §3.2.1.1, emphasis added in final paragraph.

The boldfaced sentence is critical here. The child can only be in one food unit in a given month. Regardless of whether ██████ made false representations to get the child in his food unit, the child was receiving benefits. He cannot receive benefits in the mother's food unit also.

That leads to the actions that the county did take, and whether there was any error. The agency did not simply add this child to petitioner's case because the child was already on ██████'s case. The agency asked for proof of placement and primary residence. It took petitioner until March 8 to provide documentation showing the placement of the child in her home and not ██████'s. When the documentation was provided, the agency effected the change and placed the child with petitioner effective April 1, 2013 as March benefits had already been disbursed.

I do not see an error. Petitioner would like me to find that ██████ committed fraud. That is not the purpose of this hearing. I can determine whether the agency's actions were error. It appears to me that they were prudent in requiring documentation. Had petitioner provided the placement order when she applied for FS which would effectively remove a person from another's food unit, the agency would likely have made the change at that time. The agency was being careful and ensuring that its actions are proper. There was no error.

CONCLUSIONS OF LAW

The Department did not err in adding the child to petitioner's case effective April 1, 2013.

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 Madison,
Wisconsin, this 16th day of May, 2013

\sJohn P. Tedesco
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 16, 2013.

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