



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148716

PRELIMINARY RECITALS

Pursuant to a petition filed April 15, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Chippewa County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 21, 2013, at Chippewa Falls, Wisconsin.

The issue for determination is whether the county agency correctly found that the petitioner's son lives with his mother when determining his FoodShare benefits.

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: Rhonda Kimmer

Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Chippewa County.
2. The county agency notified the petitioner on February 28, 2013, that it was reducing his FoodShare from \$367 to \$200 per month because his child does not live with him.
3. The petitioner's son does not live with him.

DISCUSSION

The amount of a FoodShare allotment depends upon net income and the number of persons in the household. The county agency reduced the petitioner's FoodShare after determining that his son lived with the child's mother rather than the petitioner. The reduction in his household size caused his FoodShare allotment to fall from \$367 to \$200 per month. He challenges the finding that the child lives with his mother but does not challenge the agency's calculations.

One cannot be considered part of more than one household in the same month. 7 CFR § 273.3(a). The federal rules provide no clear answer to what happens when a child lives with both parents. The rules do allow state agencies to create a policy where federal rules do not clearly address which parent's household the child is considered a part of, provided "the policy is applied fairly, equitably and consistently throughout the State." 7 C.F.R. § 273.1(c).

Wisconsin's policy, which is found in the *FoodShare Wisconsin Handbook*, § 3.2.1.1, provides the following guidance in these situations:

Children are included in the household where they reside when they are under the care and control of a parent or other caretaker in that household. There may be situations when the residence of a child 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.

The petitioner indicated in his request for an appeal that he had the child full time, but at the hearing, he testified that he now had the child every other week. His credibility comes into question because he was convicted of a crime by the Eau Claire county circuit court on January 24, 2013. (Wisconsin law allows criminal convictions to be considered when judging credibility. Wis. Stat. § 906.09.) It was further called into question when he stated that he was working "every now and then" but then added, "Not really." In addition, the agency worker pointed out that he lives in Bloomer, but his son attends daycare in Chippewa Falls, the home of the child's mother. A court order on placement could have helped his claim, but he acknowledged that one does not exist. Given the lack of any evidence supporting his claim other than his dubious testimony, I find that the child does not live with him and that the agency correctly reduced his FoodShare benefits.

CONCLUSIONS OF LAW

The county agency correctly reduced the petitioner's FoodShare because his son does not live with him.

THEREFORE, it is

ORDERED

The petitioner's 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 3rd day of June, 2013

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 3, 2013.

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