



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/148967

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed April 25, 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 May 21, 2013, at Milwaukee, Wisconsin.

This matter was the subject of a hearing in February of 2013. That hearing was resolved in petitioner's favor, and the matter was remanded to the respondent to implement the agreement of the parties to return petitioner's daughter, J.R., to petitioner's FS household.

The issue for determination is whether respondent correctly determined that petitioner's daughter is not part of petitioner's FS household.

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: Paul Frederickson  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Petitioner is the case head of an FS household of 2, consisting of himself and his daughter, J.R.
2. On or about April 19, 2013, petitioner's minor daughter J.R. provided an email to the agency indicating that she resides with her aunt.
3. On April 22, 2013 the agency issued a notice of decision to petitioner stating that effective June 1, 2013, his FS benefits would be \$186.00, and J.R. would no longer be enrolled in FS as part of his FS household.
4. J.R. has not resided with her father consistently, and has reportedly been living with her aunt. He considers her a runaway. He provided court documents showing that as of February 20, 2013 the Milwaukee County Circuit Court had denied a petition by the aunt seeking guardianship as he was available to J.R. as her parent.
5. Petitioner reported J.R. missing when she left his home on March 8, 2013.
6. J.R. stayed with petitioner for approximately one week in April, 2013. J.R. last stayed at petitioner's home in late April/early May of 2013.

**DISCUSSION**

The respondent bases FS benefits in part on the number of eligible persons in a household. FS regulations state that a household is composed of a "group of individuals who live together and customarily purchase food and prepare meals together for home consumption." See 7 C.F.R. §273.1(a).

In a recent decision concerning this petitioner and J.R.'s inclusion in his household, ALJ Cochrane wrote,

The agency agreed at hearing that based on the information petitioner provided about the February 20 court date, that it would add J.R. back on to petitioner's FS case. However, the agency budgets FS prospectively on a calendar month cycle. See *FS Handbook*, §§1.2.4 and 3.4.1. Thus, by the time of this hearing on February 21, J.R.'s FS had been issued for February and March on her aunt's case. To that end, I will remand the matter so that the agency can add J.R. back on to petitioner's case so that his April FS will be affected. I am also ordering that this case be "flagged" in the agency's CARES system so that the troubles petitioner faces with his sister and his daughter are accurately reflected when determining household composition, should that issue arise again.

See, *DHA Decision FOO/146811*, March 11, 2013.

The decision in *DHA Decision FOO/146811*, was ultimately entered in favor of petitioner because the respondent accepted petitioner's testimony that J.R. was living with him again. The respondent now argues that the issue of placement is again questionable as J.R. has submitted an email indicating that she is not residing with petitioner. The respondent subsequently issued its negative notice to petitioner only three days after the email from J.R., indicating that J.R. was no longer considered part of his FS household.

The volatile nature of petitioner's relationship with his daughter is well known to the respondent. Even the limited record before me demonstrates that J.R. has been in and out of petitioner's home several times in the past year.

The *FS Handbook* provides that households consist of all persons living in or temporarily absent from the same residence. See *FS Handbook*, §3.3.1.1. To qualify as temporarily absent the agency must:

Include in the household an individual temporarily absent from the household when the expected absence is no longer than 2 full consecutive calendar months past the month of departure. Some examples are absence due to illness or hospitalization, employment, and visits.

To be considered temporarily absent, one must meet ALL of the following conditions:

1. The individual must have resided with the food unit immediately before the absence,
2. The individual intends to return to the home, and the food unit must maintain the home for him/her,
3. If the absent person is a child, the caregiver of the absent child is responsible for the child's care and control when the child returns to the home, and
4. If the absent person is an adult, the adult must still be responsible for care and control of the child during their absence.

FS Handbook, §3.2.1.2.

I find nothing in the record to counter an argument that respondent's actions concerning petitioner's FS benefits were conducted without application of FS policy concerning temporary absences. Specifically, (1) there is no evidence in the record affirming that J.R. will be absent for more than 2 months, (2) the parties previously stipulated that petitioner and J.R. were residing together prior to J.R.'s recent assertion to the contrary; (3) respondent provided no evidence that J.R. does not intend to return to petitioner's home; and (4) there is no evidence that petitioner has abdicated his responsibility for the care and control of J.R. To the contrary, petitioner has consistently sought to assert said responsibility. As such, I will remand this matter to the respondent to return J.R. to petitioner's assistance group, as respondent has not demonstrated that J.R. is not "temporarily absent" pursuant to BC+ policy. While respondent may, in the future, determine that J.R. does not qualify as temporarily absent, at the present time she does.

### **CONCLUSIONS OF LAW**

The Department erred in determining that petitioner's daughter is not part of petitioner's FS household.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the agency with instructions to take the administrative steps necessary to redetermine petitioner's FS effective June 1, 2013, by adding J.R. back on his case, and issue a notice of decision regarding that action. This action shall be completed within 10 days of the date of this Decision.

### **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 28th day of June, 2013

---

\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Wayne J. Wiedenhoef, Acting Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

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

The preceding decision was sent to the following parties on June 28, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability