



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

**PROPOSED
DECISION**

FOO/149011

PRELIMINARY RECITALS

Pursuant to a petition filed April 25, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on May 23, 2013. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter: FOO-149012.

The issue for determination is whether petitioner and HGH must be included in the same FS household.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Thomas Miller, ES Supervisor, Western Consortia
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

OTHER PERSON PRESENT:

[REDACTED], petitioner's apartment-mate

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (58-year-old female; CARES # [REDACTED]) is a resident of Monroe County.
2. Petitioner and HGH (61-year-old male) share the same apartment.
3. Petitioner and HGH are not related; they each pay their own share of the rent.
4. Petitioner and HGH purchase their own food separately; petitioner and HGH prepare their own meals separately (except for approximately 3 or 4 times per month when they might prepare a meal together); petitioner and HGH eat their own meals separately (except for approximately 3 or 4 times per month when they might eat a meal together).

DISCUSSION

By federal law the 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) (2013).

In this case petitioner and HGH live together in the same apartment. However, as reflected in the above *Findings of Fact*, they do not customarily purchase food and prepare meals together for home consumption. First, they do not purchase food together. Second, the fact that they might, 3 or 4 times per month, prepare a meal together does not mean that they customarily do so. The word *customarily* means:

“in a way that follows customs or usual practices; usually.”

See, http://oxforddictionaries.com/definition/american_english/customarily

“1: based on or established by custom

2: commonly practiced, used, or observed”

See, <http://www.merriam-webster.com/dictionary/customarily>

The word *custom* means:

“a traditional and widely accepted way of behaving or doing something that is specific to a particular society, place, or time”

See, <http://oxforddictionaries.com/definition/english/custom?q=custom>

a : a usage or practice common to many or to a particular place or class or habitual with an individual

b : long-established practice considered as unwritten law

c : repeated practice

d : the whole body of usages, practices, or conventions that regulate social life”

See, <http://www.merriam-webster.com/dictionary/custom>

The County points to the following language that is found in the *FoodShare Wisconsin Handbook* [“FWH”]:

“U - Food Units:

One or more persons who live in the same household and purchase and prepare food together for home consumption. 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.

Purchase and Prepare

People living together who:

1. Share in the cost of purchasing food.
2. Share in the preparation of food.
3. Eat together.

Each person does not have to shop, provide money, prepare food, and eat together. Any of those activities is sufficient to include a member in purchasing and preparing food with the group.”

FWH 3.3.1.1. (**bold** in original)

However, the word *customarily* is not found anywhere in the above quoted FWH definition. Therefore, the FWH definition is not consistent with the definition mandated by federal law. See, 7 C.F.R. § 273.1(a)(3) (2013). In such a case federal law must control. Further, even under the FWH definition a person is a separate food unit if that person “usually purchases and prepares food for home consumption separately from the others.” Example #3, above. In this case petitioner usually purchases and prepares food for home consumption separately from HGH.

Finally, it is noted that a County computer case comment dated April 5, 2013 states that during a phone interview petitioner “said several times that they buy and mix their food together . . . ” However, both petitioner and HGH testified credibly at the May 23, 2013 Hearing that they purchase their own food separately, prepare their own meals separately (except for approximately 3 or 4 times per month when they might prepare a meal together), and eat their own meals separately (except for approximately 3 or 4 times per month when they might eat a meal together).

This Decision is being issued as a *Proposed Decision*. See, Wis. Admin. Code § HA 3.09(9)(b)1. February 2013). The Secretary of the Wisconsin Department of Health Services [“DHS”] will make the *Final Decision* in this matter.

CONCLUSIONS OF LAW

For the reasons detailed above, petitioner and HGH should not be included in the same FS household.

THEREFORE, it is

ORDERED

If this *Proposed Decision* is adopted by the DHS Secretary as the *Final Decision* in this matter, that this matter be REMANDED to the County, that the County not include petitioner and HGH in the same FS household, and that, within 10 days of the *Final Decision* in this matter, the County issue all FS to

petitioner for which petitioner is otherwise eligible and that were not issued to petitioner because petitioner was included in the same FS household as HGH.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as “PARTIES IN INTEREST.”

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties’ objections and argument will be referred to the Secretary of the Department of Health Services for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 6th day of June, 2013

\sSean 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 June 6, 2013.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability