



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/149256

PRELIMINARY RECITALS

Pursuant to a petition filed May 06, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on May 29, 2013, at Fond Du Lac, Wisconsin.

The issue for determination is whether the county agency correctly reduced the petitioner's FoodShare (FS) benefits effective March 1, 2013, due to a reduction in petitioner's FS group size from four to two persons.

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: Deb Bohlman, ES Supervisor

Fond du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. The petitioner applied for FoodShare (FS) benefits on July 25, 2012 for a household of four (petitioner and her three children: AJ, KJ and QF).

3. The father of QF is [REDACTED] [REDACTED].
4. On February 20, 2013, petitioner completed her February, 2013 renewal interview, and reported that she and her three children are still homeless.
5. On March 4, 2013, [REDACTED] [REDACTED] reported to the Moraine Lakes Call center that he has been caring for QF and KJ for many months in his residence, and requested to receive FS benefits for his care of those two children.
6. On March 4, 2013, the county agency sent a verification request to [REDACTED] [REDACTED] regarding requesting verification of the two children’s living arrangement.
7. On March 11, 2013, petitioner confirmed with a county representative that her two children were residing with [REDACTED] most of the time. She indicated that when she obtained a permanent residence (and was no longer homeless) she anticipated that her two children would return to live with her.
8. The petitioner was unable to provide any reliable evidence to establish that QF and KJ were residing with her or that she was providing primary care for those two children during the period of her February, 2013 FS review application.
9. Based upon information from the schools and the petitioner’s admission on March 11, 2013, the county agency concluded that QF and KJ were no longer residing with her and removed them from her FS group.
10. The county agency sent a March 19, 2013 Notice of Decision to the petitioner stating that effective March 1, 2013, her FS benefits would be reduced from \$659 to \$283 based upon the reduction of her FS household size from four to two persons.

DISCUSSION

The specific FS policy regarding the placement situation in this case states:

3.2.1.1 Joint or Shared Physical Custody of Children

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.

.
Only one parent can receive FS for a child. . .

(Emphasis added).

FoodShare Wisconsin Handbook, App. § 3.2.1.1.

In this case, the petitioner was not contesting that [REDACTED] [REDACTED] was providing primary care for QF and KJ during the period of the February, 2013 FS review. The petitioner admitted that she was homeless during that time, but hoped in the future to obtain a permanent resident for herself and her children. It is also clear that during March, 2013 the agency tested the living arrangement in the required fashion under the above policy of 3.2.1.1, and concluded that as of March, 2013 [REDACTED] [REDACTED] was the primary caretaker of the two children in question. As a result, the county agency correctly removed the two

children from petitioner's FS group resulting in the reduced FS group of two for the petitioner's FS benefits (petitioner and AJ).

During the May 29, 2013 hearing, ES Supervisor Deb Bohlman provided petitioner a detailed explanation regarding the calculation of the March 1, 2013 reduction in her FS benefits, and that the county is simply following FS law and policy. Ms. Bohlman explained how the petitioner's FS benefits had been calculated to be \$283 as of March 1, 2013 because her FS household size had decreased from four to two persons. The petitioner was unable to persuasively refute the county's case that her two children should be removed from her FS group. The petitioner was also unable to refute that the county agency had correctly calculated and reduced the petitioner's household from a FS group size of four to a FS group of two.

The petitioner argued that it is unfair that her FS benefits have been reduced because she already has difficulty paying her expenses for herself and her children. However, in reviewing the county agency's calculation of petitioner's FS benefits based upon FS policy and law, I find no error. Accordingly, for the above reasons, I conclude that the county agency correctly reduced the petitioner's FoodShare (FS) benefits from \$659 to \$283 effective March 1, 2013, due to a reduction in petitioner's FS group size from four to two persons.

CONCLUSIONS OF LAW

The county agency correctly reduced the petitioner's FoodShare (FS) benefits from \$659 to \$283 effective March 1, 2013, due to a reduction in petitioner's FS group size from four to two persons.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 24th day of June, 2013

\sGary M. Wolkstein
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 24, 2013.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability