



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/149441

PRELIMINARY RECITALS

Pursuant to a petition filed May 17, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on June 03, 2013, at La Crosse, Wisconsin.

The issue for determination is whether the county agency correctly reduced petitioner's FS from \$407 to \$30 effective March 1, 2013, due to petitioner's son's earned income must be included in petitioner's FS benefit calculation because his son is under 22 years of age and must be included in his FS group.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Tom Miller, ES Supervisor
Western Region for Economic Assistance
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of La Crosse County who resides with his 20 year old son, [redacted], and his 15 year old son, KY.

2. The petitioner completed his FS review during January, 2013 during which he confirmed he was living with his two sons.
3. Children under 22 years of age must be included in the same FS group as their parent(s) per FoodShare Handbook, 3.3.1.3.
4. The petitioner receives federal SSI of \$710 and State SSI of \$130.43 per month.
5. Petitioner's son, [REDACTED] [REDACTED], works at [REDACTED] [REDACTED] and earned during January and February, 2013 about \$1,193 per month.
6. The county agency sent a January 25, 2013 Notice of decision to the petitioner stating that effective March 1, 2013 his FS benefits would be reduced from \$407 to \$30, due to an increase in his FS household income by budgeting the new earned income from his son.

DISCUSSION

Petitioner filed this appeal because he disagreed with the decision to include his son and his son's income in his FS group in determining his FS benefit reduction as of March 1, 2013. However, during the hearing, petitioner admitted that [REDACTED] [REDACTED] was residing with him and was unable to provide any evidence to contest his son's earned income during January/February, 2013. As a result, the county agency was required to add [REDACTED] [REDACTED] and his income to the petitioner's FS determination. The Department's FS household composition policy states:

3.3.1.1

To determine who is nonfinancially eligible for FoodShare, you must start with all household members.

Households:

Households consist of all persons living in or temporarily absent from the same residence.  It is important to enter all household members into CARES  to ensure that the correct eligibility determination is made.

...

3.3.1.3 Relationship Rules

7 CFR 273.1(b)(1)

The following individuals **must be included in the same food unit**, even if they do not purchase and prepare meals together:

1. Spouses and spouses,
2. **Biological** (unless no longer a parent because of adoption), adoptive, or step-**parents and their children under the age of 22, and**
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

Example 1: Tim and Jane are unmarried and live together. They claim separate food unit status. Jane comes into the office and reports she had a baby. If Tim is the father, he is in the food unit with Jane and the baby.

FoodShare Wisconsin Handbook (FSWH), §3.3.1, at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. See, in accord, 7 C.F.R. §273.1.

The petitioner was unable to provide any evidence to refute his son earned the employment income at [REDACTED] which was counted by the county agency in the determination of his FS household income, as indicated in Findings of Fact #5 and #6 above. As a result, there is no dispute that the county agency correctly sent its January 25, 2013 notice to the petitioner reducing the petitioner's FS effective March 1, 2013, due to including his son and his income in the calculation of his FS benefits as a FS group of three. During the hearing, petitioner alleged that his son's employment income ended during May, 2013 resulting in less household income. However, the issue for this hearing is the March 1, 2013 reduction of his FS benefits, not whether at some future date there was a reduction in his total FS household income.

In this case, because petitioner's son was only 20 years of age at the time of his January, 2013 FS review, and [REDACTED] [REDACTED] was correctly included in petitioner's FS household. The county agency also correctly included petitioner's son's earned income in calculating the petitioner's FS benefits effective March 1, 2013 pursuant to FS Handbook, Appendix 3.3.1.3. Accordingly, based upon the above, I conclude that the county agency correctly reduced the petitioner's FS from \$407 to \$30 effective March 1, 2013, due to including his son and his income in the calculation of petitioner's FS benefits because his son is under 22 years old per FS 3.3.1.3.

CONCLUSIONS OF LAW

The county agency correctly reduced the petitioner's FS from \$407 to \$30 effective March 1, 2013, due to petitioner's son's earned income must be included in petitioner's FS benefit calculation because his son is residing in petitioner's residence and is under 22 years of age per FS Handbook, 3.3.1.3.

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 15th day of July, 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 July 15, 2013.

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