



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/151351

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services ["County"] in regard to FoodShare benefits ["FS"], a hearing was held via telephone on September 17, 2013. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: BCS-151350.

The issue for determination is whether petitioner's 15 year old son should be included in petitioner's 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: Patrica Nixon, ESS
Cindy Richard, ES Specialist
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

OTHER PERSON PRESENT:

[REDACTED], petitioner's son (15 years old)

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner has a 15-year old son ["DH"].
3. DH lives with petitioner about 20 days every month and attends school using petitioners' address.
4. By an *About Your Benefits* letter notice dated August 8, 2013 petitioner was notified that effective September 1, 2013 his FS would be reduced from \$127.00 per month to \$16.00 per month because it was determined that DH lived with his mother, not with petitioner.

DISCUSSION

The basic 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) (2011); *FoodShare Wisconsin Handbook* ["FWH"] 3.3.1.¹ Thus, for purpose of FS, in order for persons to be included in the same household the persons must live together.

In cases of parents who do not live together state policy concerning who children "live with" for purposes of FS is as follows:

"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 decision in this matter must be based on a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (September 2001). The only evidence the County offered to show that DH lived with his mother was hearsay testimony that DH's mother telephoned the County on August 5, 2013 and said that DH was with her and a Circuit Court child support order file stamped July 8, 2008 stating "she has [DH]". Exhibit #1. On the other hand, both petitioner and DH testified credibly that DH lives with petitioner about 20 days every month and attends school using petitioners' address.

Based on the evidence in the record of this matter it must be concluded that, for purposes of FS, DH lives with petitioner.

CONCLUSIONS OF LAW

For the reason discussed above, petitioner's 15 year old son must be included in petitioner's FS household.

¹ A person under 22 years of age who is living with his or her natural or adoptive parents must be considered as customarily purchasing food and preparing meals together with his or her parents even if he or she does not do so, and thus must be included in the same household as his or her parents. 7 C.F.R. §§ 273.1(b)(1)(ii) (2011); FWH 3.3.1.3.2.

THEREFORE, it is

ORDERED

That this matter be REMANDED to the County, that the County include petitioner's 15 year old son in petitioner's FS household, and that, within 10 days of the date of this *Decision*, the County issue all FS to petitioner that he is otherwise eligible for and that were not issued to him because his 15 year old son was not included in this FS household retroactive to September 1, 2013.

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 30th day of September, 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 September 30, 2013.

Rock County Department of Social Services
Division of Health Care Access and Accountability