



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/151692

PRELIMINARY RECITALS

Pursuant to a petition filed August 23, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 23, 2013, at Racine, Wisconsin.

The issue for determination is whether the Racine County Department of Human Services correctly reduced Petitioner's FoodShare allotment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Patricia Delessio
230 West Wells Street Room 800
Milwaukee, WI 53203

Respondent:

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

By: Dean Landvatter, Fraud Coordinator
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Racine County.

2. On July 30, 2013, the agency sent Petitioner a notice indicating that his FoodShare benefits would be reduced from \$166.00 per month to \$17.00 per month, effective September 1, 2013. (Exhibit V)
3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 23, 2013. (Exhibit 1)
4. At all times relevant, Petitioner lived at and continues to live at [REDACTED] Avenue in Racine. (Exhibit 1, Testimony of Petitioner)
5. At all times relevant, Petitioner's wife, [REDACTED], used the [REDACTED] address as her mailing address. (Testimony of [REDACTED])
6. At all times relevant [REDACTED]'s cats lived at the [REDACTED] address. (Testimony of Petitioner and [REDACTED])
7. [REDACTED] owns the residence on [REDACTED] Avenue. (Testimony of Petitioner, [REDACTED] and [REDACTED], Petitioner's sister; See Exhibit D)
8. At all times relevant, [REDACTED] was living with Petitioner's sister, [REDACTED] Avenue. (Testimony of Petitioner, [REDACTED] and [REDACTED])

DISCUSSION

All income from the food unit/household must be included in determining FoodShare eligibility. *FSH §4.3.1* see also *7 CFR §273.9(a)*. A food unit is defined as, "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..." *FSH §3.3.1.1*.

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.

FSH §3.3.1.3; 7 CFR 273.1(b)(1)

It is the agency's contention that Petitioner and his wife lived together and as such, her income must be counted when determining Petitioner's FoodShare allotment. The agency further asserts that when Petitioner's wife's income is taken into consideration, his FoodShare benefits must be reduced.

The agency argued that because [REDACTED] used the [REDACTED] Avenue address as her mailing address, kept her vehicles and her cats there, that she must have been living at the [REDACTED] Avenue address.

Petitioner contests the agency's assertion that his wife lives with him. Petitioner asserts that his wife and he have been informally separated and that she lives with his sister, [REDACTED].

Petitioner's sister [REDACTED] appeared at the hearing and testified that she lives out of state, but calls [REDACTED] regularly and visits for extended period of time, twice a year. [REDACTED] testified that to her knowledge, [REDACTED] was living with [REDACTED] during the time in question and was present during [REDACTED]'s visits with [REDACTED] and would sometimes answer the phone, when [REDACTED] would call [REDACTED].

[REDACTED] appeared at the hearing and testified that Petitioner and she have been separated since early 2010, because they "do not get along". [REDACTED] testified that she has continued to use the residence as her

mailing address, but that in early 2010 she moved in with [REDACTED] and [REDACTED]'s husband at an address located on Park Avenue. [REDACTED] testified that Petitioner and she are civil to each other and that she returns to the residence periodically to feed the cats that she needed to leave behind because [REDACTED]'s husband does not like the cats and neither does [REDACTED]'s dog. In addition, [REDACTED] indicated that there is no room at the [REDACTED]'s residence for her to keep her vehicles.

[REDACTED] testified that the residence on [REDACTED] Avenue used to belong to Petitioner's parents, but was given to her and to Petitioner's sister, [REDACTED], because Petitioner was not deemed responsible enough to care for the property on his own. (See Exhibit D, Testimony of [REDACTED]) [REDACTED] testified that [REDACTED] later surrendered her interest in the residence. (Id.)

[REDACTED]'s testimony that she and Petitioner do not get along well enough to live together is corroborated by a police report that has been marked as Exhibit H. The report indicates that police were called to the [REDACTED] Avenue residence in April 2010, because Petitioner and his wife were arguing and that the dispute was resolved by his wife gathering her clothing and leaving. (Exhibit H, pg. 1) In addition, a report prepared by Investigator Thomas [REDACTED], corroborates [REDACTED]'s testimony. Mr. [REDACTED]'s report indicated that Mr. [REDACTED] spoke to [REDACTED]'s mother, who told Mr. [REDACTED] that [REDACTED] had stayed with her off and on for a day or two at time, when [REDACTED] and the Petitioner would have a "blow up". Mr. [REDACTED]'s report also indicates Petitioner "appeared to be under the influence of alcohol or drugs" when Mr. [REDACTED] attempted to interview him.

[REDACTED] gave credible testimony that is corroborated by the testimony from Petitioner's other sister, [REDACTED] and by exhibits provided by the agency. Further, any evidence the agency might have to the contrary is purely hearsay. However, the Supreme Court has stated that in administrative hearings, uncorroborated hearsay cannot form the sole basis of a finding of fact when controverted by in-person testimony. *Gehin v. Wisconsin Group Insurance Board*, 278 Wis.2d 111 at ¶¶80-82 and ¶110. See also *Division of Hearings Appeals Decision on Rehearing CCB-51/102350 and CCO-51/103291*. Accordingly, it is found that the agency has not met its burden to prove, by a preponderance of the credible evidence that [REDACTED] was living with Petitioner in July 2013, when it re-determined Petitioner's benefits.

CONCLUSIONS OF LAW

That the agency incorrectly reduced Petitioner's FoodShare benefits effective September 1, 2013.

THEREFORE, it is

ORDERED

That the agency reinstate Petitioner's FoodShare benefits to \$166.00 per month, effective September 1, 2013, forward, if Petitioner is otherwise eligible for those benefits. The agency shall take all administrative steps necessary to complete these tasks within ten days 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 Milwaukee,
Wisconsin, this 8th day of October, 2013.

\sMayumi M. Ishii
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 8, 2013.

Racine County Department of Human Services
Division of Health Care Access and Accountability
pdl@legalaction.org