



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152597

PRELIMINARY RECITALS

Pursuant to a petition filed October 3, 2013, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Shawano County Dept. of Social Services to discontinue FoodShare benefits (FS), a hearing was held on November 13, 2013, by telephone.

The issue for determination is whether petitioner can continue to exclude a household member from her FS group.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Deb Marohl

Shawano County Dept. of Social Services
607 E. Elizabeth Street
Shawano, WI 54166-3105

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Shawano County.
2. Petitioner has received FS for herself and four children. She lives with an adult man, S.M. who is not the father of the four children. S.M. has been excluded from petitioner's FS group based upon her affidavit that they purchase and prepare meals separately.
3. On September 5, 2013, petitioner reported that she was pregnant with a spring, 2014 due date, and that S.M. was the father. The worker questioned petitioner's statement that they did not eat

together, and petitioner admitted that they eat together sometimes. She insisted, however, that they usually ate separately and still kept their food in separate refrigerators.

4. The worker added S.M. to petitioner's case and obtained his income information. By a notice dated September 20, 2013, the agency informed petitioner that FS were denied effective October 1, 2013 because income was over the limit.

DISCUSSION

The federal FS regulations define FS household composition as follows:

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. 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). FS rules provide further as follows:

The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

- (i) Spouses;
- (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and
- (iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent.

7 C.F.R. §273.1(b)(1).

The wording of the federal regulation is important because of a major difference between it and the Department's FS Handbook, which the agency worker relied on in adding S.M. to petitioner's FS group. The Handbook, Appendix 3.3.1, defines a "food unit" as "One or more persons who live in the same household and purchase and prepare food together for home consumption." Further, it defines "purchase and prepare" as follows:

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.

The key difference in the wording of the two sources is that the federal regulation includes the word "customarily." Individuals who customarily purchase and prepare meals together must be included in an

FS group. Customarily is defined by any number of sources to mean “usually.” See, e.g., thefreedictionary.com, merriam-webster.com, dictionary.reference.com, all available with a simple Google search of the word “customarily.”

I agree with the agency that if petitioner is sleeping with S.M. it is suspicious that they do not eat together. However, the regulations do not require S.M. to be added to petitioner’s case until the baby is born. Until then, the rules concerning purchasing and preparing food still apply. Petitioner testified under oath that she and S.M. still keep their food separate and usually they eat separately. That they “sometimes” eat together is not sufficient to require his addition to the FS group. Without any other evidence to the contrary, I must conclude that the agency erroneously added S.M. to petitioner’s FS group. S.M. should not be added to petitioner’s FS group until the agency obtains better evidence that he actually does purchase and prepare meals with petitioner, or until the baby is born, whichever is earlier.

CONCLUSIONS OF LAW

Because petitioner attests that S.M. does not purchase and prepare meals with her and her children, he should remain excluded from her FS group although petitioner is pregnant with his child.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to remove S.M. from petitioner’s FS group retroactive to October 1, 2013, and to issue appropriate supplemental FS based only upon the income and expenses of petitioner and her children. The agency shall do so within 10 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 Madison,
Wisconsin, this 18th day of November, 2013

\sBrian C. Schneider
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 November 18, 2013.

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