



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152662

PRELIMINARY RECITALS

Pursuant to a petition filed October 09, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Green County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 25, 2013, at Monroe, Wisconsin.

The issue for determination is whether the Department erred in its inclusion of petitioner's wife's income in his FoodShare allotment calculation even though they are legally separated but living together in the same home.

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: Mark Nelson

Green County Department of Human Services
N3152 State Road 81
Monroe, WI 53566

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Green County.
2. Petitioner is legally separated from his wife. They are not divorced. They live in the same home.

- 3. The agency placed both petitioner and his wife on the same FS case which resulted in a reduction of petitioner’s FS allotment effective November 1, 2013.
- 4. Petitioner appealed this reduction.

DISCUSSION

Petitioner’s only argument at hearing was that his wife’s income should not be counted as part of his FS case because the two are legally separated. He argues that this is akin to being divorced.

The FoodShare rules set forth in the *FoodShare Wisconsin Handbook* state:

3.3.1.1 HUG (Households, Units, Groups)

* * *

U - Food Units:

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. There are some exceptions for boarders, foster persons, and certain elderly and disabled individuals.

* * *

3.3.1.2 Relationship Definitions

* * *

Spouse : A person recognized by Wisconsin law as another person's legal husband or wife. Wisconsin does not recognize common law marriage or same sex marriages.

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....

The rules simply ask whether a couple is married. Legal separation does not alter this analysis. Petitioner conceded that his wife is presently his spouse. If she did not live with petitioner, then she would not be in the food unit. Similarly, if they divorce and do not purchase and prepare meals together then she will not be in the food unit. But, as long as the marriage is still legally in effect, and they share the same home, the two must be tested for eligibility and monthly allotment together.

CONCLUSIONS OF LAW

The agency did not err in testing the married couple together for FS purposes.

THEREFORE, it is

ORDERED

That this appeal is 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 27th day of November, 2013

\sJohn P. Tedesco
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 27, 2013.

Green County Department of Human Services
Division of Health Care Access and Accountability