



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/153630

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 19, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on December 18, 2013, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner is purchasing and preparing FoodShare together with her mother

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, Room 651  
Madison, Wisconsin 53703

By: Nancy Anderson

Polk County Department of Social Services  
100 Polk County Plaza, Suite 50  
Balsam Lake, WI 54810

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Polk County.
2. The county agency determined that the petitioner's FoodShare benefits would end as of December 1, 2013, because she purchases and prepares food with her mother and her mother's income places her over the program's limit.

3. The petitioner and her mother do not purchase and prepare food together.
4. The petitioner is 60 years old.

### **DISCUSSION**

FoodShare eligibility depends upon the number of persons and total income of a household. A FoodShare household consists of all persons who purchase and prepare food together. If a single person lives with others but purchases and prepares food separately, she can be considered part of a separate household. Children under 22 years old who live with a parent are always considered part of that parent's household. 7 CFR § 273.1.

The petitioner, who is 60 years old, lives with her mother, but they had not been considered part of the same household. When she renewed her application, the worker interviewing her determined that they now purchase and prepare food together and thus are part of the same household. That worker did not testify, so the only first-hand information concerning that interview comes from the petitioner. She contends that she and her mother travel to the store in the same car but that each purchases her own food and cooks her own meals. They may sit down at the same time to eat, but they do not eat the same food. The petitioner has the burden of proving that she is eligible for FoodShare, but her burden is only by the preponderance of the credible evidence, a fairly low burden that requires only that she prove that it is more likely than not that what she asserts is true. Because hers was the only testimony concerning her conversation with the worker about household composition, and she seemed credible, I will accept it as true. In doing so, I do question the worker's honesty. Rather, I acknowledge that a person's meaning can be misunderstood. In this matter, I had to ask the petitioner several times about certain facts before I understood her testimony.

Because the petitioner's mother is not part of her household, her income cannot be included when determining the petitioner's benefits. I will remand this matter to the agency to redetermine the petitioner's eligibility.

### **CONCLUSIONS OF LAW**

The county agency incorrectly included the income of the petitioner's mother when determining the petitioner's FoodShare allotment because the two do not purchase and prepare food together.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it redetermine the petitioner's FoodShare eligibility and allotment for December 2013. When doing so, it shall not count her mother's income.

### **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, Room 651, 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 19th day of December, 2013

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\sMichael D. O'Brien  
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 December 19, 2013.

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