



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/154383

PRELIMINARY RECITALS

Pursuant to a petition filed December 21, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on January 22, 2014, at Green Bay, Wisconsin.

The issue for determination is whether the respondent correctly determined petitioner's FS eligibility.

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: Crystal Glen

Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. The petitioner has three children in her household. Her boyfriend, CM, is the father of one of her children. CM pays daycare for his son.
3. CM and his brother hold title to a home formerly owned by CM's mother, who is now deceased.
4. CM lives with the petitioner.

5. The respondent included CM's income in petitioner's household income calculation after determining that CM lived with petitioner and their child in common.
6. The county agency notified the petitioner on December 17, 2013, that it was ending her FS as of January 1, 2014.

DISCUSSION

A FoodShare household consists of one or more persons who live in the same household and purchase and prepare food together for home consumption. 7 CFR § 273.1(a)(3); *FoodShare Wisconsin Handbook* § 3.3.1. Anyone under 22 years old who lives "with his or her natural or adoptive parent(s) or step-parent(s)" is considered part of that household whether or not the entire household eats and prepares food together. 7 CFR §273.1(b)(1)(ii). Because a parent who lives with a child is part of that child's household, if both parents live with a child they have in common, they are considered part of the same FoodShare household as each other.

FoodShare recipients must verify current household information, including income, in the last month of the certification period to continue receiving benefits. 7 CFR § 273.14(a)(4) and 7 CFR § 273.2(f)(8)(i)(A). The county agency ended the petitioner's FoodShare benefits as of January 1, 2014, because her household income exceeded program limits when CM's income was included. She contends that he does not live with her.

I find the petitioner's contention implausible. The respondent has provided documentation from USPS, TransUnion, Wisconsin DOT and the Division of Motor Vehicles, all of which reference CM residing at the petitioner's [REDACTED] address. This is not to say that he spends every night with the petitioner. I have no trouble believing that they may have differences that would lead to their spending some nights apart. Still, the petitioner contends that CM does spend the weekends at her home, and respondent reports finding that CM spends 3 or 4 nights per week there.

Taken as a whole, I find the petitioner's evidence that CM does NOT reside with her to be uncorroborated by any other credible source, like testimony of others or public records such as post office records, DMV records, or other public reports, and not credible as to the point of CM's actual residence. I find it noteworthy that CM did not testify. This is a civil rather than a criminal matter, and the administrative law judge has every right to draw a negative inference if either party fails to call a witness who can present relevant testimony. As a civil case, the Department's burden of proof is merely that it proves its arguments by the greater weight of the credible evidence rather than beyond a reasonable doubt. If one were to look at the scales of justice, those scales need only tip slightly in the Department's direction for it to prevail.

I recognize that this is a close case. However, under this fact pattern, I conclude that the petitioner did not establish that she was eligible for FS, or timely verify that CM does not live in her FS household with her and their child-in-common. The denial is affirmed.

The petitioner may re-apply for FS at any time. In that event, she must be prepared to establish that CM does not reside in her household by whatever means necessary, i.e., legal documents, corroborative testimony of other citizens, testimony of CM, testimony of one or both landlords, public records, leases, legible rent receipts, employer records, etc.

CONCLUSIONS OF LAW

1. The petitioner's boyfriend, CM, lives with her.
2. The county agency correctly ended the petitioner's FoodShare benefits when she did not verify her boyfriend's income.

THEREFORE, it is**ORDERED**

That the petitioner's 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, 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 17th day of February, 2014

\sPeter McCombs
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 February 17, 2014.

Brown County Human Services
Division of Health Care Access and Accountability