



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/154752

PRELIMINARY RECITALS

Pursuant to a petition filed January 10, 2014, 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 telephone hearing was held on February 18, 2014.

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

There appeared at that time 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: Ashley Johnson

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. Petitioner has historically received FS for himself individually. He lives with his fiancée. His fiancée has been excluded from petitioner's FS group based upon his indication that they purchase and prepare meals separately.
3. At his annual renewal on November 19, 2013, petitioner reported that he and [REDACTED] lived together and shared meals.
4. The worker added petitioner's fiancée to petitioner's case and obtained her income information. By a notice dated December 11, 2013, the agency informed petitioner that his FS allotment would be reduced from \$180.00 to \$99.00 because of the addition of his fiancée's income to the household budget.

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.

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, § 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.

Handbook, § 3.3.1.

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."

Petitioner testified under oath that his fiancée eats with him and prepares his meals. He noted that she is on the lease for the residence that they share. Based on the totality of the evidence, I find that the petitioner and his fiancée customarily purchase and share meals. As such, the respondent correctly included petitioner's fiancée's income when determining petitioner's household income.

CONCLUSIONS OF LAW

Petitioner and his fiancée reside together and customarily purchase and prepare food together.

THEREFORE, it is

ORDERED

That petitioner's appeal is hereby 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 6th day of March, 2014

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, 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 March 6, 2014.

Brown County Human Services
Division of Health Care Access and Accountability