



FH
[REDACTED]

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

In the Matter of

[REDACTED] A. [REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/155069

PRELIMINARY RECITALS

Pursuant to a petition filed January 22, 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 hearing was held on March 6, 2014, by telephone.

The issue for determination is whether the petitioner's FS case was correctly discontinued effective February 1, 2014.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] A. [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Cheryl Streich, ES Spec.
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
[REDACTED] [REDACTED], WI 54301

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. Prior to February 2014, the petitioner had an ongoing FS case as a household that included herself and her granddaughter, but not her husband, [REDACTED] [REDACTED]. The petitioner claimed that [REDACTED] was not living with her.
3. [REDACTED] has earned income from a job at [REDACTED]. When [REDACTED]'s earnings are added to the petitioner's Social Security income of \$786 monthly, the total exceeds the FS income limit for a household of three persons.
4. The agency began investigating the petitioner's household composition in October 2013, when it realized that the petitioner was incorrectly using the FS card of an incarcerated son for herself. On October 17, 2013, the petitioner admitted to a police officer/investigator that she resided with her husband of approximately 25 years, [REDACTED] [REDACTED].
5. [REDACTED] [REDACTED] lived with the petitioner at her [REDACTED] [REDACTED], [REDACTED] [REDACTED], address from at least October 2013 through February 1, 2014.
6. On January 13, 2014, the Department issued written notice to the petitioner advising that her FS would be discontinued effective February 1, 2014. The basis for discontinuance was that Mr. [REDACTED] had been added to the petitioner's case, and the household was now over the income limit for FS.

DISCUSSION

Because they reside together, the petitioner and her husband were correctly placed in the same FS household by the Department. The policy states:

3.3.1 Food Unit/Food Group/Relationships

...

Households consist of all persons living in or temporarily absent from the same residence

. ...

[Such] persons who live in the same household and purchase and prepare food together for home consumption [are a food unit]. This group is tested for eligibility together. There are some exceptions for boarders, foster persons, and certain elderly and disabled individuals.

...

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,*
2. Biological (unless no longer a parent because of adoption), adoptive, or step-parents and their children under the age of 22, **and**
3. Adults and minor children under the age of 18 years over whom they are exercising parental control

[emphasis added]

FoodShare Wisconsin Handbook (FSWH), §3.3.1, at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>
See, in accord, 7 C.F.R. §273.1.

Under the above rules, if the petitioner and her husband are residing together, they must be treated as one FS household. That means that the husband's income must be included. The petitioner offered only her unreliable testimony that her husband did not live with her. Credible proof of an alternative address was not offered. [REDACTED]'s employment records at [REDACTED] list the petitioner's address. The agency had given

the couple an opportunity to prove that [REDACTED] lived at a different address. His response was to provide the agency with a bogus lease. Thus, the Department was correct in concluding that they live together, that his income (\$11.40 hourly x 40 hours weekly) puts them over the FS income limit, and that the FS case should be closed.

A separate decision will be issued regarding the petitioner's BadgerCare Plus benefits, as different rules apply.

CONCLUSIONS OF LAW

1. The Department correctly concluded that the petitioner's husband resided with her as of February 1, 2014.
2. The Department correctly discontinued the petitioner's FS, due to excess income, effective February 1, 2014.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law of if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of March, 2014

\sNancy J. Gagnon
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 March 17, 2014.

Brown County Human Services
Division of Health Care Access and Accountability