



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159695

PRELIMINARY RECITALS

Pursuant to a petition filed August 05, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services - WI Rapids in regard to FoodShare benefits (FS), a telephone hearing was held on September 02, 2014.

The issue for determination is whether the respondent correctly closed petitioner's FS case and subsequently re-opened petitioner's case.

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: Beulah Garcia

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Vilas County.
2. Petitioner and [REDACTED] have two children in common, and [REDACTED] has two children from another relationship.

3. Petitioner was required to complete a Six Month Report Form (SMRF) to renew her FS benefits by May 31, 2014. She failed to do so, and her FS terminated as of June 1, 2014. The petitioner's SMRF was submitted to the respondent on June 26, 2014. Following a new FS application, on July 14, 2014, petitioner was notified that FS would be open for her and [REDACTED], but that the four children would not be included in the FS household.
4. Petitioner's two children reside with petitioner's mother, who is guardian of the children. One of the children attends school in Rhinelander, Wisconsin.
5. [REDACTED]'s two children reside with [REDACTED] mother, who is guardian of the children. [REDACTED]'s mother receives Kinship Care benefits. [REDACTED]'s children attend school in St. Germain, Wisconsin.
6. Petitioner and [REDACTED] reside in Eagle River, Wisconsin, which is located approximately 25 minutes from St. Germain and approximately 30 minutes from Rhinelander.

DISCUSSION

The first issue is whether the county agency was correct in terminating the petitioner's FS at the end of May, 2014 due to petitioner's failure to timely provide a Six Month Report form (SMRF). The federal regulations governing the FS program require a periodic case review or "recertification" be performed as a condition of ongoing FS eligibility. See 7 CFR § 273.14. FS benefits are not to be continued beyond the recertification deadline until the recertification process has been completed. Ibid., (a)(4).

When processing a FS application or review, the FoodShare Handbook provides detailed directives to county agencies that delineate the agency and client responsibilities. See <http://www.emhandbooks.wi.gov/fsh/>. If FS closes for lack of a timely review and the household takes the required action within the calendar month following the certification period, the agency shall reopen FS and prorate benefits from the date the household took the required action. The new certification period will begin the month after the month the review was due.

The petitioner submitted the SMRF on June 26, 2014. The SMRF was due by the end of May, 2014. The closure was due to a failure to complete the review. The SMRF was received, and a new application was submitted on July 1, 2014. Additional verification was sought regarding petitioner's household composition. That information was received and the respondent reopened the case effective July 1, 2014 on July 14, 2014. Thus, it is uncontroverted that the petitioner's FS case was correctly closed and subsequently reopened by the respondent following receipt of the SMRF in June, 2014.

The second issue raised by the petitioner concerns the addition of her two children and [REDACTED]'s two children to petitioner's FS household.

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.

7 C.F.R. §273.1(a). The generic household definition requires that household members “live together” and “purchase and prepare” meals together. This definition does not solve the problem posed by this case, because the children live with, and eat with, both their parents and their guardians.

The only other relevant instruction offered by the federal regulation is in 7 C.F.R. §273.1(c) and is an authorization to the state agencies to create policies to answer questions pertinent to household composition issues:

(c) Unregulated situations. For situations that are not clearly addressed by the provisions of paragraphs (a) and (b) of this section, the State agency may apply its own policy for determining when an individual is a separate household or a member of another household if the policy is applied fairly, equitably and consistently throughout the State.

In Wisconsin, the state agency has developed policy standards to determine FS household composition in cases involving children in joint custody. The policy is clear in requiring that the child cannot be a member of more than one FS group in the same month. See the FoodShare Wisconsin Handbook, §3.4.1. State policy also determines the assignment of a joint custody child to a specific household:

Children are included in the household where they reside when they are under the care and control of a parent a person's biological, step, or adoptive mother or father regardless of age. Parenthood doesn't have to be verified or other caretaker in that household. There may be situations when the residence of a child a person's biological, step, or adopted son or daughter, regardless of age, is not easily determined. There are many methods that can be used to determine the child's residence. If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit.

FS Handbook, §3.2.1.1.

The respondent testified that it went to great lengths to determine to include the children in petitioner's FS household, including speaking with the children's respective guardians. I note that [REDACTED]'s mother, the guardian of [REDACTED]'s children, receives Kinship Care benefits. Electronic Case Comments indicate that the guardian of [REDACTED]'s children has indicated that the children attend school in St. Germain, and are in petitioner's household less than 50% of the time; [REDACTED] has previously indicated to the respondent that they are with him 78% of the time. Exhibit 2. Similar contradictory information also was provided regarding petitioner's children. Petitioner's mother, the guardian of petitioner's two children, has reported to the respondent that the children attend school in Rhinelander, and that as guardian she makes all decisions about school, medical care and visitation with her parents. At hearing, petitioner testified that they usually have all four of the children more than 50% of the time.

Based upon the record before me, I cannot conclude that petitioner and [REDACTED] have placement, care and control of their children to the extent necessary to include them in petitioner's FS household. Thus, the petitioner has failed to establish any error on the part of the respondent in this regard.

CONCLUSIONS OF LAW

1. Respondent correctly closed petitioner's FS case on May 31, 2014 due to failure to complete a timely SMRF review.

2. The petitioner has failed to establish any error on the part of the respondent in excluding petitioner's children and [REDACTED]'s children from petitioner's FS household.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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 or 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 25th day of September, 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 September 25, 2014.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability