



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/160513

PRELIMINARY RECITALS

Pursuant to a petition filed September 8, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kewaunee County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 29, 2014, at Kewaunee, Wisconsin. A hearing set for October 8, 2014, was rescheduled at the petitioner's request.

The issue for determination is whether the Department correctly included the income of the petitioner's son, [REDACTED], in the FS household's income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Theresa Schleis, ES Spec.
Kewaunee County Department of Social Services
810 Lincoln Street
Kewaunee, WI 54216

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [REDACTED]) is a resident of Kewaunee County.
2. Prior to September 2014, the petitioner received FS for his household of seven persons, in the amount of \$662 monthly. The FS household included the petitioner's son [REDACTED].

3. The petitioner's case underwent a six-month review. As part of that process, the Department requested and received verification of [REDACTED]'s new earned income at [REDACTED]. The Department then included [REDACTED]'s income when calculating the household's income for September FS benefits.
4. On August 18, 2014, the Department issued a notice saying that the FS case would close effective September 1, 2014, due to failure to complete the six-month review. As noted above, the review was then completed. On August 26, 2014, the Department issued written notice to the petitioner advising that the FS benefit would be decreased to \$162 monthly, beginning September 1, 2014. The basis for reduction was the increased household income, brought in by [REDACTED].
5. [REDACTED], age 19, primarily resides with the petitioner. The petitioner intends to claim him as a tax dependent for 2014.

### DISCUSSION

The income of the petitioner, his wife, and their son [REDACTED] is not in dispute. Similarly, the arithmetic of the Department's allotment calculation is not in dispute. Rather, the petitioner argues that [REDACTED] should not be included in their FS household because the petitioner exerts little parental control over his son, and because [REDACTED] is not contributing his earnings to their household.

Neither of these arguments can carry the day. Because they reside together, the petitioner, his wife, and their son [REDACTED] 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.

##### **Examples**

Examples of a food unit include:

1. A person living alone.
2. A group of persons living together who purchase and prepare meals together for home consumption.
3. A person (or group of persons) living with others, but who usually purchases and prepares food for home consumption separately from the others.

*FoodShare Wisconsin Handbook (FSWH)*, §3.3.1, at <http://www.emhandbooks.wisconsin.gov/fsh>.

The federal FS rule goes on to state that persons living in the same dwelling **MUST** be treated as being in the same FS household (whether they eat together or not), if they are parents, step-parents, and a child under the age of 22:

*(b) Special household requirements.--(1) Required household combinations. The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified:*

- (i) Spouses;*
- (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and*
- (iii) A child (other than a foster child) under 18 years of age who*

lives with and is under the parental control of a household member other than his or her parent. A child must be considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult.

(emphasis added)

7 C.F.R. §273.1(b).

Thus, the petitioner must have his 19-year old son included in his FS household.

As the hearing progressed, the petitioner suggested that his residence was no longer ██████'s primary residence. However, he was unable to supply a lease for ██████'s alternate address, or an alternate mailing address. He acknowledged that some of ██████'s possessions and clothing remained at his house. For purposes of the BadgerCare Plus program, households are required to project the number of persons they expect to claim as tax dependents for the current year. The petitioner's projection count is consistent with claiming ██████ as a dependent for 2014. Finally, the petitioner did not report that ██████ had left his FS household until the Department discovered the son's earnings. Thus, I believe that the preponderance of the credible evidence supports the finding that ██████ is currently residing with the petitioner.

#### CONCLUSIONS OF LAW

1. The Department correctly included the petitioner's 19-year old son as a member of his FS household, because his primary residence is with the petitioner. The fact that the son is not contributing toward household expenses is not relevant under the federal rule.
2. The Department correctly reduced the petitioner's household's FS allotment effective September 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 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 26th day of November, 2014

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\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 November 26, 2014.

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