



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/161199

PRELIMINARY RECITALS

Pursuant to a petition filed October 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 hearing was held on November 12, 2014, at Green Bay, Wisconsin.

The issue for determination is whether the respondent correctly included petitioner's daughter in her FS household.

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: Allison Van Groll
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. The county agency originally denied petitioner's FS application due to failure to timely receive verification. That issue was resolved, and petitioner's FS case is now open.

3. Petitioner's FS case household includes her daughter, who is 26.
4. The petitioner and her daughter do not purchase and prepare food together.
5. The petitioner's daughter is 26 years old.

DISCUSSION

FoodShare eligibility depends upon the number of persons and total income of a household. A FoodShare household consists of all persons who purchase and prepare food together. If a single person lives with others but purchases and prepares food separately, she can be considered part of a separate household. Children under 22 years old who live with a parent are always considered part of that parent's household. 7 CFR § 273.1.

The petitioner who is presently separated from her husband, lives with her 26 year old daughter. At application, petitioner indicated that she and her daughter shared food. As a result, the worker interviewing her determined that she and her daughter purchase and prepare food together and thus are part of the same household. That worker did testify regarding the information provided by the petitioner, but the petitioner countered that she had subsequently contacted the respondent to report that she and her daughter were not purchasing and preparing food together. The respondent concurred at hearing that it had been informed as of September 10th that the petitioner and her daughter were not purchasing and preparing food together. Petitioner's daughter also testified that she and her mother did not share food after August, 2014.

The petitioner has the burden of proving that she is eligible for FoodShare, but her burden is only by the preponderance of the credible evidence, a fairly low burden that requires only that she prove that it is more likely than not that what she asserts is true. Because her testimony concerning her attempts to correct the information provided to the FS worker was largely corroborative and uncontroverted, and because she seemed credible, I will accept it as true. In doing so, I do not question the worker's honesty. Rather, I acknowledge that a person's meaning can be misunderstood, especially where, as here, there is a minor language barrier. In this matter, I had to ask the petitioner several times about certain facts before I understood her testimony.

Because the petitioner's daughter is not part of her household, she was incorrectly added to petitioner's FS household. I will remand this matter to the agency to re-determine the petitioner's FS allotment based on a household that does not include petitioner's daughter.

CONCLUSIONS OF LAW

The county agency incorrectly included petitioner's 26 year old daughter in petitioner's FS household because the two do not purchase and prepare food together.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it redetermine the petitioner's FoodShare eligibility and allotment for September, 2014, forward. When doing so, it shall not include petitioner's 26 year old daughter in petitioner's FS household.

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 November, 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 November 25, 2014.

Brown County Human Services
Division of Health Care Access and Accountability