



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/161356

PRELIMINARY RECITALS

Pursuant to a petition filed October 20, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Rock County Dept. of Social Services to discontinue FoodShare benefits (FS), a hearing was held on November 13, 2014, by telephone.

The issue for determination is whether petitioner's wife lives with him.

PARTIES IN INTEREST:

Petitioner:

James Shuga
508 W. Madison Avenue
Milton, WI 53563

Respondent:

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

By: Lauri Bongle
Rock County Dept. of Social Services
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner received FS as a one-person household. In September, 2014 the county received a referral that petitioner's wife lived in his home. An investigation ensued.
3. Petitioner's wife works at a [REDACTED]. Her mailing address is different from petitioner's for all matters, including employment, voting, and circuit court matters.

4. The investigator spoke with family members who insisted that petitioner’s wife does not live with him although she does visit to help him with care needs (petitioner is disabled and receives SSI). A neighbor told the investigator that petitioner’s wife lives with him.
5. Based upon the neighbor’s report, the investigator concluded that petitioner’s wife lives with him. The county then added her to petitioner’s FS case, obtained her income information, and based upon both her income and petitioner’s SSI, notified petitioner that FS would close effective November 1, 2014 because income was over the limit.

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.

7 C.F.R. §273.1(a). FS rules provide further as follows:

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....

7 C.F.R. §273.1(b)(1); see also FS Handbook, Appendix 3.3.1.2.

In this case the *only* evidence supporting the conclusion that petitioner’s wife, reported as being estranged from petitioner, actually lives with him is a hearsay statement from a neighbor. Petitioner testified that the neighbor bears a grudge against him for uncertain reasons.

It is possible that petitioner and his wife are not really estranged. They certainly have motivation to appear to be separated as her income would affect his eligibility for a number of government assistance programs. However, mere suspicion is insufficient to make a finding of fact that they live together, and I cannot base the finding of fact on a hearsay statement made by a possibly unreliable neighbor.

CONCLUSIONS OF LAW

The county erred by adding petitioner’s wife to his FS household.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to remove petitioner’s wife from his FS household, to re-determine FS eligibility for petitioner as a one-person household effective November 1, 2014, and to issue any supplemental FS to which petitioner is entitled. The county shall do so within 10 days of this decision.

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 17th day of November, 2014

\sBrian C. Schneider
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 17, 2014.

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