



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FOO/162034

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 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 hearing was held on December 15, 2014, at Hayward, Wisconsin.

The issue for determination is whether the petitioner is a Wisconsin resident for FoodShare purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact

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

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # Redact) receives FoodShare through Sawyer County.
2. On October 27, 2014, the county agency notified the petitioner that his FoodShare would end because he was not a resident of Wisconsin.

3. The petitioner has a Wisconsin driver's license. He keeps many of his belongings here. A friend gathers his mail from a post office box in Wisconsin and sends it to him in Florida.
4. The petitioner has had a charter boat business in Florida that has been his main source of income since 2008. He usually lives on the boat and does not have a permanent address there.
5. In the last year, the petitioner's only trip to Wisconsin lasted from late September until the middle of October 2014. During this visit he stayed short periods with a "dozen" different friends and relatives. The previous year, he was in Wisconsin for a few months and did some maintenance work.

DISCUSSION

The FoodShare agency seeks to end the petitioner's benefits because it contends that he resides in Florida. FoodShare residency requirements are not strict. Residents must live in the state in which they apply. States cannot impose durational requirements or require a household to live in a permanent dwelling, have a fixed address, or intend to remain in the state. 7 CFR § 273.3(a). A person cannot be considered a resident of a state he is in solely for vacation. Nor can he receive benefits from two different places in the same month. *Id.*

Wisconsin policy requires that "[a]pplicants for FoodShare must reside in, or be temporarily absent from Wisconsin" and gives the following guidelines for determining residency:

1. Residence does not mean the legal place of residence or principal home.
2. Residence does not mean the intent to live permanently in Wisconsin or the county.
3. A person who is in Wisconsin or in a county solely for vacation purposes is not a resident of the county.
4. Do not require someone to reside in Wisconsin or within a county for any minimum length of time.
5. Residence does not mean a permanent dwelling or a fixed mailing address.

FoodShare Wisconsin Handbook, § 3.2.1.

The petitioner has ties to Wisconsin: He holds a Wisconsin driver's license, he has his mail forwarded from a post office box in Sawyer county, he stores some belongings here, and he occasionally visits. But he does not currently live here: He has run a charter boat business in Florida for the last six years. In the last year, he has spent less than a month in Wisconsin; the previous year, he was here for a few months. There is no evidence that he spent more than a few weeks at a time here in the several years before then. I cannot tell when he applied, but the case notes indicate that he was found eligible as of August 25, 2014, and received his September benefits on the 15th of that month. He testified that he was in Wisconsin from the end of September through the middle of October, so the preponderance of the evidence is that he was not in Wisconsin when he applied. Furthermore, even if he were, the trip was a vacation, so he would not be considered to be living there. Based upon this, I find that he did not meet even the lax FoodShare residence rules when he applied. Therefore, the agency correctly determined that he does not qualify for benefits.

In making this decision, I am not suggesting that the petitioner engaged in fraud. He did not seek benefits from two states at once, and he testified credibly that he was denied benefits in Florida because he did not have a fixed address. Although I have no jurisdiction over Florida social services agencies, it does appear that if he was denied FoodShare because he did not have a fixed address, the agency violated federal law. I suggest that he reapply in that state and provide the local agency with a copy of 7 CFR § 273.3(a), which is available online.

CONCLUSIONS OF LAW

The FoodShare agency correctly seeks to end the petitioner's FoodShare benefits because he did not live in Wisconsin when he applied.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 2nd day of January, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 2, 2015.

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