



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/162982

PRELIMINARY RECITALS

Pursuant to a petition filed January 02, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 21, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly reduced Petitioner's FoodShare by including income from Petitioner's wife in the household and her income in the allotment calculation.

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: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

Petitioner also contests the denial of a request for BadgerCare+ Medicaid based on the same circumstances as involved here - that denial is the subject of a separate decision in Division of Hearings and Appeals case # BCS -162983.

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.

2. Petitioner filed his appeal to contest a notice informing him that his FoodShare benefits were to be decreased from \$194 per month to \$16 per month effective February 1, 2015. This was later corrected to \$139.00 per month when the agency realized the household was not receiving unemployment benefits and had a heat expense.
3. The reduction in FoodShare benefits noted at Finding # 2 occurred because the agency concluded that Petitioner's wife is in the home and included her income in the allotment calculation.
4. Petitioner contacted the agency on November 20, 2014 and reported that his spouse was moving out of the home. This triggered inquiry from the agency as to Petitioner's living arrangements. The agency learned that Petitioner had used the above address on December 2013, October 2014 and January 2015 benefit applications and/or renewals, an Energy Assistance application and for voting purposes. Further, the property was and is titled in the name of Petitioner's spouse.
5. Based on the factors noted at Finding # 4, the agency included Petitioner's spouse in his FoodShare group, making it a household of 2.
6. Initially the agency concluded that household income totaled \$1775.97 with \$1661.97 from employment and \$114.00 from unemployment compensation (UC). This was all income of Petitioner's spouse. The agency realized that Petitioner's spouse did not receive UC, dropping gross income to \$1661.97.
7. The agency determined that the household had a standard deduction of \$155.00; an earned income deduction of 20% and shelter costs of \$591.63. While the agency at first did not include a utility standard it subsequently realized Petitioner's spouse had received an energy assistance payment in the prior 12 months and included a \$446 per month utility allowance. The net result was a monthly FoodShare allotment of \$139.00.

### DISCUSSION

An economic support agency is required to verify household composition in its determination of eligibility for the FoodShare program. If household composition is questionable, agencies are required to seek verification. *FoodShare Eligibility Handbook (FSH)*, §1.2.3.7. Spouses are to be included in the same food unit if living together. *FSH*, §3.3.1.3.

Petitioner argued that he does not live with his spouse; that he is homeless. Thus he believes he should be entitled to the full allotment per month for a single person with no income, i.e., \$194.00 per month. He testified that he has not lived with his spouse for about four years and simply used her address for lack of a more permanent address. Petitioner did concede that he did include himself in the house of his spouse for Energy Assistance purposes.

It is abundantly clear that household composition was questionable in this case and that the agency is mandated to seek verification to accurately determine that composition. When Petitioner used the above address on 3 public benefit applications, an Energy Assistance application and in voting records the agency concluded that Petitioner and his spouse were living in the same household. I agree with that conclusion. It is also worth noting that voting records are particularly powerful as it would be a crime to falsely claim residency. *Wis. Stats.*, §12.13. Quite simply there is no evidence to support Petitioner's assertion that he was not living with his spouse. If Petitioner was not in the home with his spouse for four years one would expect that there would be some documentation that one can provide to demonstrate this.

I note here that Petitioner's FoodShare allotment was ultimately reduced by \$54.00 per month; benefits have not been discontinued. If circumstances change or if Petitioner can demonstrate a different residence he should provide documentation to the local agency. If it has an effect, a changed reported in one month is effective in the following month. *FSH*, § 6.1.3.3.

**CONCLUSIONS OF LAW**

That the agency correctly included Petitioner's spouse and her income in Petitioner's FoodShare allotment calculation thus reducing the amount of Petitioner's FoodShare allotment.

**THEREFORE, it is**

**ORDERED**

That this 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 Milwaukee,  
Wisconsin, this 27th day of February, 2015

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\sDavid D. Fleming  
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 February 27, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability