



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/164692

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 17, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 16, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether Petitioner's FoodShare benefits should be discontinued because she lives in an Adult Family Home and it is providing Petitioner's food.

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: Jeanie Ortiz

Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner filed this appeal alleging a discontinuance of her FoodShare benefits. This is a very confusing case and it is not clear if Petitioner's FoodShare were discontinued. There is no relevant

Notice of Decision among the agency exhibits. Regardless, the discontinuance was about to happen and Petitioner's FoodShare benefits have been continued pending a hearing decision.

3. Petitioner lives in an adult family home (AFH) – [REDACTED] (hereinafter – the AFH). Per state records, found at the Wisconsin Department of Health Services website this is a licensed AFH. <https://www.dhs.wisconsin.gov/guide/afhwinn.pdf>.
4. The agency had determined that Petitioner was eligible for FoodShare based on its understanding that Petitioner was paying the AFH rent every month and, further, with the understanding that the residents of the AFH buy their own food and keep it separate from the food of the other residents.
5. The agency initiated, or was about to initiate, this discontinuance of Petitioner's FoodShare (the agency did initiate an overpayment action that is the subject of a separate appeal and decision – Division of Hearings and Appeals case # 164691) based on information from the AFH that it gives its residents \$40 per week to buy food. In other words, the agency concluded that the AFH is actually paying for Petitioner's food.
6. At all times relevant here, Petitioner's income was from Social Security benefits and in the gross amount of \$824.78 per month. She has a payee.
7. Petitioner has a special needs diet requiring about 5000 calories per day.

### DISCUSSION

FoodShare regulation is found in the FoodShare Wisconsin Handbook (FSH) and the Federal Code of Federal Regulations CFR. Adult Family Homes are licensed and regulated via the Wisconsin Administrative Code.

The FoodShare Wisconsin Handbook states the following with regard to FoodShare eligibility for residents of AFHs:

#### **3.2.1.5.2 Adult Family Home (AFH)**

An AFH is a type of group living arrangement where care and maintenance above the level of room and board (but not including nursing care) are provided in a private residence by the care provider whose primary domicile is this residence for 3 or 4 adults, or more adults if all of the adults are siblings, each of whom has a developmental disability.

The individual in an AFH who is receiving foster care or paying board may be in their own FoodShare group if they wish.

*FSH, §3.2.1.5.2.*

The Code of Federal Regulations does not permit residents of institutions to receive FoodShare where the institution provides more than 50% of three meals per day. *7 CFR 273.1(b)(6)(vi)*.

The term 'board' is not defined in the CFR nor in the FSH. The Merriam Webster definition is "... to provide with regular meals and often also lodging usually for compensation." Merriam Webster online dictionary, found at <http://www.merriam-webster.com/dictionary/board>.

Adult family homes are licensed and regulated by the Wisconsin Department of Health Services. That regulation requires that the AFH have a written agreement in place with its residents describing financial arrangements. Further, the law requires that the AFH provide adequate nutrition for its residents:

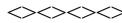
- ...
4. The amount, source and method of payment for providing care and maintenance to the resident of the home, specifying any costs for which the resident will be liable and whether the service

coordinator agrees to be responsible for meeting the financial security requirement under s. DHS 82.04 (3). If the service coordinator is responsible for financial security, the agreement shall describe how resources will be made available to the sponsor in the event that payments to the sponsor for resident are not received;

5. A statement about who will exercise control over the resident’s funds, which shall be a decision of the resident or the resident’s guardian, if any, and whether or not those funds will be maintained in a bank account. If the sponsor agrees to exercise control over the resident’s funds, the sponsor shall deposit resident funds in a separate bank account opened for the resident if the balance of the resident’s personal funds exceed \$200, shall keep records that account for the receipt and expenditure of all of the resident’s funds which the sponsor controls, including any interest or dividends earned, and shall provide the resident or the resident’s guardian, if any, with an accounting of the resident’s funds on request;

...

*Wisconsin Administrative Code, §DHS 82.06(3)(e)4 and 5.*



**(4) NUTRITION.** (a) The sponsor shall provide each resident with a quantity and variety of foods sufficient to meet the resident’s nutritional needs and preferences and to maintain his or her health.

(b) The sponsor shall provide to each resident or ensure that each resident receives 3 nutritious meals each day. This requirement does not apply to the sponsor if a meal is included in other programming in which the resident participates and is paid for by the provider of that programming.

(c) Food shall be prepared in a sanitary manner.

(d) Residents shall be routinely served their meals in common dining areas with other household members.

(e) Meals prepared by the sponsor shall take into account special physical and religious dietary needs of residents.

*Wisconsin Administrative Code, §DHS 82.07(4).*

‘Sponsor’ is defined as follows:

**(14)** “Sponsor” means the person certified to operate an adult family home who is responsible for the home, whose primary domicile is the home and who provides care and maintenance to residents of the home.

*Wis. Admin. Code, §DHS 82.02(14).*

It should also be noted that FoodShare regulation does not permit FoodShare for specialized diets. In general, a household must initially pass a gross income limit. The FoodShare eligibility calculation process allows for certain deductions from gross income to arrive at a “net income” then tested against a “net income limit”. The determination of a person’s FoodShare allotment is made by budgeting all earned and unearned income of the FoodShare household. *FSH, §4.3; 7 C.F.R. §273.9(b)*. Certain expenses are deducted from income, *FSH, §4.6; CFR 273.9(c)*. The FoodShare allotment is calculated pursuant to *7 C.F.R. § 273.9*. The maximum FoodShare allotment amounts, based on household size, are listed at *FSH, §8.1*.

From all of the above it would seem that residents of an adult family home in Wisconsin should be having all of their nutritional needs met by the adult family home. Nonetheless, the Wisconsin FSH states that a resident of an adult family home paying board, which usually means paying for meals, may be on a separate FoodShare case.

The burden of proof lies with the party seeking to change the status quo; here that is the agency – it seeks to end an ongoing benefit. I am concluding that the evidence does not demonstrate that it has met that burden. While an adult family home is supposed to be meeting Petitioner’s nutritional needs it is not clear if it is doing that or it is has some other arrangement with Petitioner. Notably lacking here is information/evidence from Petitioner’s payee, Petitioner’s social worker, a copy of the written agreement

that adult family home is supposed to have with Petitioner and, perhaps, other evidence to which the other sources have led. I am, therefore, ordering restoration of Petitioner's FoodShare allotment but with the requirement that the agency proceed with all do haste to determine exactly what Petitioner's food purchasing arrangement is.

Petitioner would be well advised, however, not to spend her FoodShare allotment until this question is finally resolved so as to avoid a potentially larger overpayment should it become conclusive that she is not entitled to FoodShare.

Circumstances here are further complicated by the fact that, as of the time of the hearing, Petitioner had obtained employment. Nonetheless, Petitioner's employment and earnings had no bearing on the circumstances involved here; rather, it may affect her FoodShare benefits in some fashion going forward. If she thinks the determination of her FoodShare benefits in the future is incorrect, she may again file an appeal.

### CONCLUSIONS OF LAW

That the evidence presented is not sufficient to demonstrate that Petitioner's FoodShare benefits should be discontinued.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency with instructions to rescind any discontinuance of Petitioner's FoodShare allotment backdated to April 1, 2015 and to make a new determination as to whether Petitioner is eligible for FoodShare based on its collection of evidence from Petitioner's adult family home residence, Petitioner's social worker, Petitioner's payee and any other source necessary to make the agency's final determination. A Notice of Decision must be sent to Petitioner. These steps must be accomplished within 10 days of the date of this Decision. Petitioner may appeal a decision that is not in her favor.

### 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 12th day of May, 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 May 12, 2015.

Winnebago County Department of Human Services  
Division of Health Care Access and Accountability