



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

FOO/164913

PRELIMINARY RECITALS

Pursuant to a petition filed March 24, 2015, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Jefferson County Dept. of Human Services to discontinue FoodShare benefits (FS), a hearing was held on May 12, 2015, by telephone. A hearing set for April 22, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether the county correctly added petitioner's ex-husband to her FS household.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact

Respondent:

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

By: [Redacted]
Jefferson County Dept. of Human Services
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Jefferson County.
2. Petitioner received FS as a one-person household. She had a review in February, 2015, with completion needed by February 28 to avoid an interruption in FS.
3. During the FS telephone interview petitioner reported that she lived in the same home as her ex-husband and that she paid rent to him. After the interview the worker sent petitioner the review

paperwork including a signature page for petitioner to return and a statement regarding her eating situation with her fellow resident.

4. Petitioner returned the items on March 5 (at that point the FS were closed because the review had not been completed by February 28). On the eating statement petitioner put in a “Y” under the question “eat together Y or N” regarding her ex-husband. Both petitioner and her ex-husband signed the statement. The worker then informed petitioner that her ex-husband would have to be added to her FS household, and when he was added his income caused the household to be over the FS income limit.
5. On March 7 petitioner wrote to the worker saying that her “landlord” does not eat with her and stores his food separately. The worker responded with a March 10 letter saying that because she changed her answer about eating together the county would send out an investigator to verify petitioner’s eating situation.
6. On May 12, 2015, the morning of the hearing, the investigator visited petitioner’s home unexpectedly. Petitioner’s ex-husband showed the investigator some items in the garage but refused to allow him into the home. (I note that the investigator’s report, filed after the hearing, describes the visit to the home essentially the same as petitioner’s ex-husband described the visit during the hearing).

### 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). The Department typically requires individuals living together to simply provide a statement indicating that they purchase and prepare meals separately. See FS Handbook, Appendix 1.2.6.2. However, if information regarding purchasing and preparing meals becomes questionable, the agency can request verification and even do a front end investigation. Handbook, App. 1.2.3.7 and 1.2.5.

In this case petitioner responded to the initial inquiry by returning a statement saying that she and her ex-husband eat together. Petitioner testified that she did not understand the question, thinking that it meant did they *ever* eat together. However, the explanation on the form says that the responder should indicate “whether or not you buy, cook and eat food with each person.” Certainly if the residents eat only an occasional meal together they would at least question the meaning of “eat together Y or N” before responding, but in this case petitioner answered “Y,” and both she and her ex-husband signed the form.

As soon as the worker told petitioner that adding her ex-husband to the FS household could lead to FS being closed due to income being over the limit, petitioner responded that they actually do not purchase and prepare meals together. The worker told petitioner that the county would send an investigator out to allow petitioner to verify the new statement. Because petitioner provided conflicting statements, at that point it became her burden to verify which statement was correct.

It is a little puzzling why it took two months for the county to refer the case to the investigator (the investigator's report says the referral was on May 11, the day before he went to petitioner's home), but when he did arrive petitioner did not verify that she and her ex-husband ate separately. Petitioner complained that the investigator showed up without warning, but that action is reasonable. If the investigator called ahead, it would allow the subject to arrange the household accordingly.

Petitioner's ex-husband correctly stated that he had no obligation to allow the investigator into the home, but petitioner had the obligation to verify the separate eating situation due to her prior statement that they ate together. In the garage he showed the investigator a tub labeled with petitioner's name that contained some boxed items, and also a virtually empty refrigerator, but his refusal to allow the investigator into the home meant that there was no way the separate eating situation could be meaningfully verified.

I conclude that the county handled the case correctly. When petitioner reported that she and her ex-husband ate together, the worker correctly added him and his income to the case. When petitioner responded to the pending end of the FS due to her ex-husband's addition, the burden shifted to her to show that the original statement was wrong. Petitioner has not met that burden because the investigator was unable to complete his investigation.

### CONCLUSIONS OF LAW

The county correctly added petitioner's ex-husband, with whom she lives, to petitioner's FS case after both individuals signed a statement that they ate meals together.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 20th day of May, 2015

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\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 May 20, 2015.

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