



FH

[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/169529

PRELIMINARY RECITALS

Pursuant to a petition filed October 20, 2015, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Lafayette County Dept. of Human Services to discontinue FoodShare benefits (FS), a hearing was held on November 12, 2015, by telephone. The county provided a large package of documents that I have marked Exhibits 1-26 in the order they were placed in the package. Petitioner provided exhibits as well; I marked those as Exhibits 27-30.

The issue for determination is whether petitioner's ex-husband should be included in her FS household.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

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

By: [REDACTED]

Lafayette County Dept. of Human Services
627 Main Street
Darlington, WI 53530

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Lafayette County with an address on [REDACTED].
2. Petitioner applied for FS for herself only on August 28, 2015; she previously reported that she was going through a divorce, and that although she had no income, her husband paid the rent and car insurance. Petitioner requested to exclude her then 15-year-old son, D.H., from her FS and

- was told that D.H. could not be excluded if he lived with her. She reported that her mother gave her \$100 to pay for bills (petitioner complained that the county continued to budget that amount in later months but I see no evidence it was counted more than once). FS opened for a two person household.
3. On September 3 petitioner reported that D.H. moved in with his father, stating that she did not want to force her husband to pay child support. Exhibit 5. The worker requested a written statement from petitioner and her husband with the address that D.H. was residing. Exhibits 6 and 8. Petitioner responded by sending a note from her husband saying the date he and D.H. moved out, but with no address. See Exhibit 11.
 4. In mid-September the county received a query from Marathon County saying that petitioner's daughter-in-law reported that she and her husband (petitioner's older son) were moving to Lafayette County to live with her "mother-in-law, father-in-law, and brother-in-law." Exhibit 14. Petitioner responded to a query by saying that she had been homeless, her husband and D.H. were in the home, but on September 14 they moved out, and petitioner and her older son's family moved in. Exhibit 10.
 5. Petitioner's divorce was finalized on September 18, 2015. The divorce judgment showed both parties having the same [REDACTED] address. Exhibit 20.
 6. After some explanations, the county notified petitioner on September 28 that FS for November would increase to \$580 for a household including just petitioner and her older son's family. Exhibit 13. The worker also referred the case to an investigator because of continued questions about petitioner's husband's and D.H.'s living arrangement.
 7. On October 15 the investigator submitted his report. Exhibit 19. The most important points were that when he went to the home on September 30, 2015, D.H. was there, and that his address at his school remained the [REDACTED] address. He also found evidence that petitioner's husband still used the [REDACTED] address, and that petitioner's husband had no alternate address. [Although petitioner disputed some statements in the report she did not dispute the most important points.]
 8. Because the agency could not determine that petitioner's husband was living somewhere other than the [REDACTED] address, it added him back to the FS case. Using only his earned income the agency determined that household income was over the FS limit, and by a notice dated October 16, 2015 the county informed petitioner that FS would close November 1 because income was over the limit. Exhibits 21 (the notice) and 24 (the budget); although the notice shows both the ex-husband's earned income and \$800 per month family support he is said to pay, the budget counted only the earned income.
 9. Petitioner filed this appeal. FS were continued at the same rate as issued for October (\$357).

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;
- (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and
- (iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent.

7 C.F.R. §273.1(b)(1); see also FS Handbook, Appendix 3.3.1.2. Under FS rules it does not matter that petitioner is divorced. If she and her ex-husband live at the [REDACTED] address, they must be included in the FS unit because they are parents of D.H.

I admit that immediately after the appeal hearing my first thought was that the county agency was being overly strict with petitioner. However, having reviewed all of the evidence, including petitioner’s submissions, I am convinced that petitioner’s ex-husband has not actually moved out of the [REDACTED] address, and that he and D.H. remain in the home. As noted, petitioner and her petitioner’s ex-husband have provided no alternate address other than to claim that his employer put him up for a while in an unnamed hotel. Petitioner’s ex-husband writes that he is working in Madison and that he is away for “3 days,” but he does not say where he returns to on the other days. See Exhibit 29, page 2.

The question is a simple one. If petitioner’s ex-husband does not live at the [REDACTED] address, where does he live? The fact that the entire family is unwilling to answer that question leads me to conclude the same as the county – that the [REDACTED] address remains his primary address. Until petitioner can verify that her ex-husband actually lives elsewhere, the county may continue to count his income in determining the FS eligibility for the household.

I note that any FS issued under the continued benefits order are considered to be overpaid.

CONCLUSIONS OF LAW

The county correctly placed petitioner’s ex-husband back in her FS household because the best evidence available shows that he continues to live at the residence despite their recent divorce, and since they share custody of their 16-year-old son, petitioner’s ex-husband’s income must be counted for FS eligibility.

THEREFORE, it is **ORDERED**

That the petition for review 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 16th day of November, 2015

\sBrian C. Schneider
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 November 16, 2015.

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