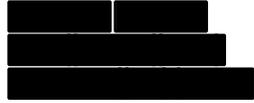




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/172100

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2016, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Dane County Dept. of Human Services to deny FoodShare benefits (FS), a hearing was held on March 11, 2016, at Madison, Wisconsin.

The issue for determination is whether the agency correctly denied FS following a December, 2015 re-application.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: [Redacted]
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.
2. Petitioner received FS until April 1, 2015. The benefits were closed after petitioner allegedly failed to verify information about the father of two of her children. A lengthy appeal followed with the primary issue being whether the father lived with petitioner, and by a decision dated

- November 19, 2015 the Division of Hearings and Appeals upheld the agency action, finding that the father lived with petitioner. See Exhibit 2.
3. On December 10, 2015 petitioner submitted a copy of a lease dated September 15, 2015 with her alone listed as the lessee. Exhibit 3. The lease included language, however, that the apartment could be occupied by two adults and three children. Petitioner also provided a utility bill that was in her name. A worker noted that petitioner needed to reapply and that the lease did not state who was living at the residence.
 4. On December 14, 2015, petitioner reapplied for FS, BadgerCare Plus (BC+), and child care assistance, again asserting that the father did not live with her.
 5. Petitioner completed an interview on December 18, 2015. The worker questioned the household composition, noting that the child support agency listed the father as living at the same address. See Case Comments, Exhibit 9, page 3.
 6. On December 21, 2015 the county sent petitioner a verification request. One item on the list was "People living in your home," and suggested examples of acceptable verification were a lease, a statement from the landlord, or an affidavit. Also requested was verification of petitioner's earned income, specifically pay stubs from the last 30 days or an Employer Verification Form. See Exhibit 8, pages 1 and 2. The due date for child care was December 30, 2015 and for other programs was January 13, 2016.
 7. On December 21, 2015 petitioner provided three pay stubs. One was dated in September and the other two were undated. See Exhibit 9, page 2.
 8. On January 5, 2016 the county sent petitioner a notice denying child care because she did not verify requested information. Exhibit 8, page 17.
 9. Another verification notice was sent on January 5, 2016, but only for FS and BC+. Exhibit 8, page 7. It again requested verification of people living in the home and of petitioner's earned income. The due date remained January 13.
 10. Petitioner provided the verification of her earned income on January 12, 2016, but she provided nothing else regarding the father's whereabouts.
 11. By a notice dated January 14, 2015 the county denied FS and BC+ for failing to provide requested verification. Exhibit 8, page 21.
 12. On January 19 petitioner spoke with a county worker. The worker explained that the September 1, 2015 lease was insufficient to show where the father was living. Petitioner needed to show where he was living if not with her. On January 26 petitioner presented a copy of an [REDACTED] driver's license in the father's name that was issued that day.
 13. The county refused to accept the license on its own based upon the history of the case. During the prior investigation the father changed his Wisconsin ID to an address that was described in the hearing as a storage unit, so the county was suspicious of the father's use of an ID to claim an address. See Exhibit 4, page 1. Furthermore, the county received information that the father continued to pick up his children at the day care center in [REDACTED] despite allegedly living in [REDACTED].

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 the federal law, if petitioner and the father live with their children-in-common, they must be included together in the FS household. Obviously, given the litigation involving his whereabouts prior to the December 14 reapplication petitioner knew that his whereabouts continued to be an issue with the county.

During the hearing petitioner provided a number of other documents verifying that the father now resides primarily with his mother in [REDACTED], although he still spends time in [REDACTED]. Mr. [REDACTED] acknowledged that he could accept this information, but stated that petitioner should reapply because the December 14 application was closed more than 30 days ago. Petitioner argued that the county should have accepted petitioner's attempts to verify his residence, and at the very least accepted the [REDACTED] driver's license as verification that he lived outside petitioner's home.

I agree with the county that the copy of the lease was not sufficient. The lease did not say who was living in petitioner's residence, and petitioner did not provide any proof that the father lived elsewhere until she provided the [REDACTED] license. The question is whether the county should have accepted the [REDACTED] driver's license as proof of the father's absence.

An FS recipient is required to verify information that can affect eligibility. 7 C.F.R. §273.2(f). If the household fails to verify required information by the time limit, the agency may deny the benefits. 7 C.F.R. §273.14(g)(3); FS Handbook, Appendix 1.2.1.2. The agency should assist the applicant if she requests assistance. FS Handbook, App. 1.2.1.3. If sources of verification are unavailable, the agency should use the best information available. Id.

Based upon those rules, the county correctly denied FS on January 14 because petitioner did not verify by the January 13 due date. There is no basis for me to order FS back to the December 14, 2015 BC+ application date. However, for FS the inquiry does not end with the January 14, 2016 denial.

The FS Handbook provides at App. 2.1.2.1:

At application, when a FS household fails to submit required verification by the 30th day following the filing date, the application should be denied. The household has an additional 30 days from the date of a timely denial, or 60 days from the filing date, to submit the required verification and open FS without requiring a new application or interview (i.e. required verifications are received during the period on or after the 31st day but no later than the 60th day from the filing date). Benefits should be prorated from the date all required verifications were submitted. The initial month of application should be denied.

Unlike BC+ and child care, an FS applicant can have her application reopened if it is denied for lack of verification and then she submits the verification within the next 30 days. Thus I must determine if the county appropriately refused to reopen petitioner's FS application after she submitted the [REDACTED] driver's license.

Although it is close, I conclude that the county correctly refused to reopen the FS application when petitioner provided the driver's license on January 26. First, the license was issued that very day, making it appear that the father applied for it solely to get benefits reopened. Mr. [REDACTED] noted that the father previously attempted to use an ID to prove an address different from petitioner's address, and that address turned out to be a storage unit. Mr. [REDACTED] also was aware that the father was picking up his children from day care in [REDACTED] making his alleged [REDACTED] address suspicious.

Petitioner now has provided additional verification of the father's residence, and Mr. [REDACTED] appears prepared to accept it. At this point, however, I conclude that petitioner should reapply. The submission of the [REDACTED] driver's license was not sufficient to verify that the father lived outside petitioner's home because the county had a reasonable belief that he remained closely connected to petitioner despite having a driver's license with a different address.

CONCLUSIONS OF LAW

1. The county correctly denied petitioner's December 14, 2015 FS application because petitioner did not verify that the father of her two younger children no longer lived with her.
2. The county correctly refused to accept an [REDACTED] driver's license presented within the 30 days after denial as verification of the father living elsewhere because he previously presented questionable ID and he still appeared to be living in [REDACTED].

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 15th day of March, 2016

\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 March 15, 2016.

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

Attorney [REDACTED] [REDACTED]

Attorney [REDACTED] [REDACTED]