



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/173244

PRELIMINARY RECITALS

Pursuant to a petition filed March 30, 2016, 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 April 27, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly closed the petitioner's FS case effective April 1, 2016.

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: [Redacted], IM Spec. Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Prior to April 2016, the petitioner received FS as a household of one person. The petitioner's performed the required periodic case review in early March 2016, and reported that she now lives with [Redacted]. On the review document, she stated that she prepares and shares food with [Redacted].

Because [REDACTED] already had his own open FS case, the agency closed the petitioner's solo case and added her to [REDACTED]'s case effective April 1, 2016.

3. On March 14, 2016, the Department issued a standard written notice to the petitioner advising that her FS case would be discontinued effective April 1, 2016, due to her inclusion in another FS household.
4. The agency then redetermined the FS eligibility for [REDACTED]'s household of two persons. On March 11, 2016, the Department issued written notice to [REDACTED] advising that his FS case would be closed from April 1, 2016, forward. The basis for closure was excess household income. The monthly income included [REDACTED]'s indisputed income of \$1,607.34 (\$1,418 Social Security + \$189.34 pension), and the petitioner's \$1,098 earned income (\$510.82 x 2.15).
5. The petitioner and [REDACTED] purchased and prepared food together from at least March 2016, to the current time.

### DISCUSSION

When two adults reside together and share food, the federal regulations require that they be treated as one FS household. 7 C.F.R. §273.1(b); *FoodShare Wisconsin Handbook, (FSWH)*, 3.3.1.2. The agency contends that the petitioner and Mr. [REDACTED] resided together and shared food from March 2016 to the present.

The federal FS rule on household composition reads 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.**

(b) *Special household requirements.--*(1) Required household combinations. 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. A child must be considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult.

(emphasis added)

7 C.F.R. §273.1(a),(b). See also, *FS Wisconsin Handbook (FSWH)*, § 3.3.1.2 - .3, viewable at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

The petitioner agrees that she and [REDACTED] have lived together from at least March 2016 to the present. The amount of his income is not in dispute. The petitioner signed off on a statement on her review form that they are sharing food, so the agency's action of combining their FS households was correct. When their incomes were combined, the total of \$2,705 exceeded the FS gross income limit for two persons of \$2,656. Thus, the agency's April 1, 2016, discontinuance was correct.

### CONCLUSIONS OF LAW

1. The petitioner was correctly included in Mr. [REDACTED]'s FS household from April 1, 2016, forward.
2. The agency correctly closed the petitioner's solo FS case effective April 1, 2016.

**THEREFORE, it is**

**ORDERED**

That the petition 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 Madison,  
Wisconsin, this 28th day of April, 2016

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\sNancy J. Gagnon  
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 April 28, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability