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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

FOO/143385

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 27, 2012, 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 October 02, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency has sufficient information to determine that one of Petitioner's children should be removed from her FoodShare household and placed in the FoodShare household of the child's father.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services

1 West Wilson Street

Madison, Wisconsin 53703

By: Katherine May

Milwaukee Enrollment Services

1220 W Vliet St

Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest the reduction in the amount of her FS benefits. The reduction was effective September 1, 2012. The reason for the reduction was that the agency

removed one of petitioner's children (NE) from her case and placed that child on the FoodShare case of the child's father.

3. The reason that the agency made the change noted at Finding # 2 was that the father came to the agency and gave them a copy of NE's school records showing his address and a 2002 court order giving him primary placement.

### DISCUSSION

At the hearing for this case Petitioner presented school records showing her address as well as the address of NE's father and a 2004 court order that indicated that the court adopted a placement agreement of the parties that placed NE with Petitioner from Sunday at 4 PM until Friday at 6 PM.

The following analysis is to be employed by the agency with making a determination as to which parent's household should include a child as part of that household's FoodShare group where there is a dispute between parents as to the placement of the child:

#### 3.2.1.1 Joint or Shared Physical Custody of Children

Children are included in the household where they reside when they are under the care and control of a parent a person's biological, step, or adoptive mother or father regardless of age. Parenthood doesn't have to be verified or other caretaker in that household. There may be situations when the residence of a child a person's biological, step, or adopted son or daughter, regardless of age, is not easily determined. There are many methods that can be used to determine the child's residence. If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit.

If the parents cannot or will not decide, compare the parents' activities and responsibilities against the following list and determine which one is exercising more control than the other:

- 1.If the parents reside in different school districts, where does the child attend school? Who selected the school?
- 2.Who assists the child with homework or school-related tasks?
- 3.Are there tuition costs for the child's education? If so, who pays those costs?
- 4.If the child is enrolled in day care, who arranges for and pays these costs?
- 5.Who is responsible for taking the child to and from school and/or day care?
- 6.Which parent is listed as the contact for emergencies at the child's school or day care provider?
- 7.Who arranges medical and dental care for the child? Who selects the physician and dentist?
- 8.Who maintains the child's medical records?
- 9.Who initiates decisions regarding the child's future?
- 10.Who responds to medical or law enforcement emergencies involving the child?
- 11.Who spends money on food or clothing for the child when the child visits the absent parent?
- 12.Who disciplines the child?

13. Who plays with the child and arranges for entertainment?

14. Are more of the child's toys, clothing, etc. kept at one parent's home than the other's?

Only one parent can receive FS FoodShare for a child. If you still cannot determine which food unit the child should be in, the caretaker that first applies would be eligible. Use the best information available to make your decision, and document in case comments the basis of your determination. If you still cannot determine which food unit the child should be in, call the CARES Client Assistance for Reemployment and Economic Support call center.

*FoodShare Wisconsin Handbook, § 3.2.1.1.*

Quite frankly, this analysis has not been employed by the agency in this case. A further complication is that if this decision simply orders that NE be returned to Petitioner's FoodShare case it is possible that it will simply generate an appeal from the father. Additionally, the court orders submitted by both parties are so old that neither one is a reliable reflection of the current status of placement. Petitioner did testify that she has primary placement of the child but clearly there is tension between the parents as to placement that can only be resolved with additional information. The school address information is not helpful.

I am, therefore, directing that the agency take the steps necessary to complete the analysis noted above. It is certainly free to supplement that with additional information, e. g., child-support records or additional court records. If the agency concludes that it incorrectly removed NE from Petitioner's case it must restore NE to Petitioner's case and backdate supplemental FS benefits. If it concludes that it correctly remove the child from Petitioner's FoodShare case, Petitioner may again file an appeal.

### **CONCLUSIONS OF LAW**

That the available information is not conclusive as to the proper placement of petitioner's child, NE, for purposes of determining whether petitioner or the father of the child should have the child on their FoodShare case.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency with instructions to take the steps necessary to determine which FS household NE belongs in; Petitioner's or the father's. If the agency needs additional information with which to make that determination it must request that of the parent(s) within 10 days of this decision in writing and allow the time mandated in the FoodShare Wisconsin Handbook for submission of verification. Upon receipt of the information agency shall make a determination within 10 days of receipt. If there is no response to the agency's request for additional information from Petitioner, this matter is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 24th day of October, 2012

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David D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals

c: Division of Health Care Access and Accountability, DHSDHADHCAA@Wisconsin.gov -  
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Enrollment Services



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The preceding decision was sent to the following parties on October 24, 2012.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability