



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CTS/143412

PRELIMINARY RECITALS

Pursuant to a petition filed August 27, 2012, under Wis. Stat. § 227.42, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on October 02, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency has presented evidence sufficient to demonstrate that Petitioner's child should be removed from her household thus ending her Caretaker Supplement benefit.

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 discontinuance of her Caretaker Supplement (CTS) benefit effective September 1, 2012. The reason for the discontinuance of the CTS benefit was that the agency removed a child of Petitioner's (NE) from her case and placed that child in the home of the child's father. This was done so that the father received the FoodShare benefit attributable to the child being in the home but had the added effect of terminating Petitioner's CTS.
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.

- 4. 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.

DISCUSSION

The SSI Caretaker Supplement Handbook (Handbook) describes the analysis an agency is to follow for purposes of determining whether a parent has custody for purposes of the CTS program:

3.1.10 Joint Custody Arrangements

When custody of a child is shared between parents, the parent with whom the child resides the majority of the time is identified as caring for the child for CTS purposes.

When the natural or adoptive parents of a child do not live together, and have joint custody (through a mutually agreed upon arrangement or court order) and you cannot determine who the child is living with the majority of the time, act on the CTS case as follows:

- 1. Determine if the agreement or court order awarding joint custody designates a “prim ary caretaker.” A parent designated as the primary caretaker is the primary person.
- 2. If one parent is not designated, ask the parents to decide which one is the “primary caretaker.” If they decide within the 30 -day processing, act on the application as based on what they decided.
- 3. If no decision is made within the 30 days of the application date, review the parents’ activities and responsibilities to determine which parent is the primary caretaker. Use the list below:

- a. This list is not exclusive, and there may be situations where you find additional criteria to apply.

There are cases in which these questions may be answered positively for both parents. However, in reviewing parental responsibilities and roles, usually you will find one parent more often identified. Identify this parent as the primary person for determining eligibility.

Document your decision in the case record.

Handbook, §3.1.10.

Petitioner did testify that she has primary placement of the child and the more recent Court order adopting a placement agreement places NE with Petitioner. The court orders submitted by both parties are so old that neither one is a reliable reflection of the current status of placement and there is clearly tension between the parents as to placement. The school address information is not helpful. Nonetheless, the evidence is not sufficient to change the status quo relative to the CTS benefit which has different rules than the FoodShare program. I am concluding that the agency has not demonstrated that it correctly discontinued Petitioner’s CTS.

CONCLUSIONS OF LAW

That the available evidence is not enough to demonstrate that Petitioner’s CTS was correctly terminated.

THEREFORE, it is ORDERED

That this matter is remanded to the agency with instructions to take the steps necessary to reverse the CTS discontinuance. This must be done within 10 days of the date of this decision.

As an aside, the agency may again terminate benefits if it obtains more definitive information.

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

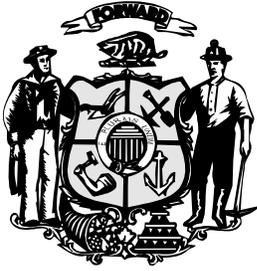
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 20th day of December, 2012

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
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 December 20, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability