



FH
[REDACTED]

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

In the Matter of:

[REDACTED]

DECISION

FOO/144015

PRELIMINARY RECITALS

Pursuant to a petition filed September 21, 2012 under Wis. Admin. Code § HA 3.03 (September 2001) to review a decision by the Milwaukee County Department of Health and Human Services ["County"] in regard to Food Stamps ["FS"], a Hearing was held via telephone on October 16, 2012.

The issue for determination is whether petitioner's 2 minor sons should be included in his FS household.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Department of Health Services

P.O. Box 7850

Madison, Wisconsin 53707-7850

BY: Belinda Bridges, Income Maintenance ["IM"] Specialist, Advanced

Milwaukee County Department of Health and Human Services

1220 West Vliet Street

Milwaukee, Wisconsin 53205

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County, Wisconsin.
2. Petitioner applied for FS on September 13, 2012.
3. Petitioner is the father of male child CP (age 11 years) and of male child AP (age 9 years); petitioner does not live with the mother of CP and AP and is not married to her.
4. CP and AP are currently on an FS case headed by their mother.
5. CP lives with petitioner and is with petitioner all the time when he is not in school; petitioner is the primary contact for CP's school and CP's school has petitioner's address listed as CP's address.
6. AP is with petitioner on weekdays from the end of school until about 8 or 9 in the evening at which point he goes to his grandmother's home; on weekends AP is sometimes with his mother and sometimes with petitioner; AP's school has AP's grandmother's address listed as AP's address.

DISCUSSION

In order for a person to get FS for a child the child must be in that person's FS household. Petitioner is requesting that CP and AP be included in his FS household

The basic definition of a *household* for purposes of FS is 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)(3) (2011); *FoodShare Wisconsin Handbook* ["FWH"] 3.3.1. The issue here is whether or not CP and AP "live with" petitioner for FS purposes.

In cases of parents who do not live together state policy concerning who children "live with" for purposes of FS is as follows:

"Children are included in the household where they reside when they are under the care and control of a parent or other caretaker in that household. There may be situations when the residence of a child 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 can not 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 for a child. If it still can not be determined which food unit the child should be in, the caretaker that first applies would be eligible. ”

FWH 3.2.1.1.

In this case, based on a preponderance of the credible evidence in the record of this matter, it must be concluded that CP lives with petitioner. See, *Finding of Fact #5*, above; See also, Wis. Admin. Code HA 3.09(4) (September 2001). This conclusion is based on petitioner's testimony and a letter from CP's school. However, the evidence in the record of this matter is not sufficient to conclude that AP lives with petitioner. It appears that AP spends only about 30 hours over week, plus some weekends, with petitioner and does not sleep overnight at petitioner's house. See, *Finding of Fact #6*, above.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's minor son CP (but not his minor son AP) must be included in his FS household.

ORDERED

That this matter be REMANDED to the County, that the County include petitioner's minor son CP (but not his minor son AP) in his FS household, and that, within 10 days of the date of this Decision, the County redetermine petitioner's eligibility for FS retroactive to September 13, 2012 and issue all FS for which petitioner is otherwise eligible retroactive to September 13, 2012.

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 Madison,
Wisconsin, this 5th day of November, 2012

Sean P. Maloney
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 November 5, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability