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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/145067

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 5, 2012, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Marathon County Dept. of Social Services in regard to FoodShare benefits (FS), a hearing was held on January 24, 2013, by telephone. Hearings set for December 19, 2012 and January 3, 2013 were rescheduled at the petitioner's request.

The issue for determination is the county's refusal to place petitioner's children on his FS case.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Maikou Yang

Marathon County Dept. of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner applied for FS on June 28, 2012. He reported that he and his children's mother share placement of the three children but that he has the children more than she does. Initially the county proposed to add the children to petitioner's case effective September 1, but then, in August, a correction was made and the children were kept on their mother's case because she

applied for FS for them first. By a notice dated August 13, 2012, the county informed petitioner that FS for just himself would be issued for September.

3. Prior to taking the action, the county did not go through the Department's list of questions to determine primary placement for FS purposes. The county simply kept the children on the mother's case because she applied for the child ren first.
4. The court order shows that both parents have equal placement of the children.
5. Prior to the hearing Ms. Yang went through the questions with both parents. Although the questions with the mother showed little difference between the placements, petitioner responded that he actually had the children more nights than the mother, that the children's school was picked based upon his residence and he is listed as the primary parent at school. He stated that he does the majority of the activities at least with the two boys while activities are shared equally for their daughter. He names two of the children as dependents on his taxes.

### 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). The generic household definition requires that household members "live together" and "purchase and prepare" meals together. This definition does not solve the problem posed by this case, because the children live with, and eat with, both of their divorced parents.

The only other relevant instruction offered by the federal regulation is in 7 C.F.R. §273.1(c) and is an authorization to the state agencies to create policies to answer questions pertinent to household composition issues:

(c) *Unregulated situations.* For situations that are not clearly addressed by the provisions of paragraphs (a) and (b) of this section, the State agency may apply its own policy for determining when an individual is a separate household or a member of another household if the policy is applied fairly, equitably and consistently throughout the State.

In Wisconsin, the state agency has developed policy standards to determine FS household composition in cases involving children in joint custody. The policy is clear in requiring that the child cannot be a member of more than one FS group in the same month. See the FS Handbook, §3.4.1. State policy also determines the assignment of a joint custody child to a specific household:

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 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 you still can not 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 can not determine which food unit the child should be in, call the CARES Client Assistance for Reemployment and Economic Support call center.

FS Handbook, §3.2.1.1, emphasis added in final paragraph.

As a first point, clearly the county erred by failing to ask the relevant questions when petitioner first applied for FS and sought to have the children on his case. As a result, I am forced to rely on only hearing testimony from one parent. However, Ms. Yang did go through the questions with the mother in January, 2013, and while the mother painted a much closer picture of the placement situation than petitioner did, the mother did acknowledge that petitioner takes the boys to Cub Scouts and all three children to dental appointments, with everything else being equal. In addition, two other pieces of evidence point more to petitioner. First, he is listed as the primary parent at the children's school. Second, his calendar history shows that he had more overnight stays with the children than the mother. Obviously the calendars are petitioner's creations, but they appear to be kept historically and do not show indicia that they were cobbled together recently for purposes of the hearing.

Based upon the evidence I conclude that petitioner has somewhat more placement responsibility than the mother. Obviously, the best result in a case like this would be for the parents to agree to a placement situation for the children for FS purposes, but without such an agreement the agency has no choice but to

place all three children in one FS household. I thus will order that the children be placed in petitioner's FS household effective for March, 2013 benefits. Because of FS rules that disallow individuals from being on two FS cases in the same month, I cannot order them placed prior to March because February FS already have been issued with the children on their mother's case. I also assume that the mother will appeal the change for March; if she does, I urge the county to involve petitioner in any hearing so that the Administrative Law Judge can hearing both parents.

### **CONCLUSIONS OF LAW**

Petitioner's children should be on his FS case because, although he and the children's mother have shared placement, he comes out as primary caretaker based upon the Department's shared placement policy.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to place petitioner's children on his FS case in the next possible month. The county shall take the action within 10 days of this decision.

### **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 4th day of February, 2013

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\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 February 4, 2013.

Marathon County Department of Social Services  
Division of Health Care Access and Accountability