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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/145419

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 23, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to the sufficiency of FoodShare benefits (FS), a telephone hearing was held on December 19, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly reduced the petitioner's December, 2012, FS from \$123 to \$16 due to a reduction in household composition under FS rules.

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: Alma Lezama, HSPC  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner's minor daughter, [REDACTED] was a member of a separate FS household together with her biological mother, [REDACTED] in September, 2012.

3. On September 21, 2012, the county agency removed [REDACTED] from [REDACTED]'s FS household because she had failed to verify living arrangement, i.e., that the child was living with her.
4. On September 28, 2012, the petitioner filed an online application for FS for a three person household composed of himself, his girlfriend Eden, and his daughter [REDACTED]
5. On October 22, 2012, the county agency approved FS for the household, including [REDACTED] as a household member, effective with the November, 2012, FS allotment at the \$123 allotment level.
6. On November 2, 2012, [REDACTED] brought to the agency a copy of a circuit court temporary findings and order that showed that [REDACTED] was living with her in a shared physical placement arrangement with [REDACTED] whereby they shared joint legal custody of [REDACTED] with a week-on and week-off alternating arrangement; and such arrangement was in place and operating as of at least November 1, 2012. In addition, [REDACTED] provided school records indicating that [REDACTED] resided with her as a primary address of record with the school; and immunization records tending to show that she had taken the child for shots and maintained the medical records of the immunizations because she possessed them.
7. On November 5, 2012, the county agency issued a Notice to the petitioner informing him that his FS would be reduced in December, 2012, from \$123 to \$16 because one person was no longer in the home or household, i.e., [REDACTED]
8. On November 23, 2012, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the reduction of his FS allotment in December, 2012.

### 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 child lives with, and eats with, both of his 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 FoodShare Wisconsin 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.

FoodShare Wisconsin Handbook, §3.2.1.1.

When the county made the determination, the worker was aware of the court order and it was clear that this was a precisely 50/50 shared custody situation, so it was reasonable for the agency to look at the list of questions posed in §3.2.1.1. In doing so, testimony of Ms. Lezama indicates that the other FS household head, [REDACTED], brought two document sets with her on November 2, 2012. The agency representative testified that [REDACTED] provided [REDACTED]'s school records demonstration that she lives at [REDACTED]'s, and immunization records indicating that [REDACTED] had taken [REDACTED] for the immunizations as [REDACTED] possessed the records. In addition, [REDACTED] had applied for FS for [REDACTED] before [REDACTED] and had been receiving FS for [REDACTED] in at least September.

Under the facts known to the agency at the time of the November 2, 2012, determination, the preponderance of the evidence supports the agency decision, and that it was reasonable under the known facts to be more likely than not that [REDACTED] was a member of [REDACTED]'s FS household under FS policy. [REDACTED] established that she had been "first in time" to apply, with a brief interruption due to a processing problem. More importantly, she established to the agency that she 50/50 custody, as of at least November 1, 2012, and [REDACTED] conceded that this was so. In addition, the agency representative testified that [REDACTED] provided documents showing [REDACTED] used her address for school contact purposes, and that [REDACTED] had maintained immunization records for the child. This is a close case, but it is enough under these facts and the general laundry list above, to establish that [REDACTED] was correctly concluded to be in [REDACTED]'s FS group. If petitioner has documentation or evidence to support his testimony that he is the primary contact with school and medical personnel, he can always present that information to his county worker to seek future change. This was also something he did not do for this hearing. At this point, I cannot disagree with the county's conclusion.

The agency correctly reduced the petitioner's FS to \$16 in December, 2012, when it removed [REDACTED] from his FS household.

### CONCLUSIONS OF LAW

The county correctly concluded that petitioner is not the primary caretaker of his daughter for FS purposes.

**NOW, THEREFORE, it is ORDERED**

That the petition for review herein be and the same is hereby 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 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 January, 2013

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\sKenneth D. Duren, Assistant Administrator  
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 January 4, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability