



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/146986

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 30, 2013, 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 February 20, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly determined the amount of the petitioner's FS allotments from February 2013 forward. Specifically, the issue is whether the agency correctly declined to add two of the petitioner's children to his FS household (and remove them from their mother's FS household) for February 2013 forward.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

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

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. The petitioner has had an ongoing FS case since February 2011. During a January 2013 review, he requested the addition of his two minor daughters to his FS case from February 2013 forward. On January 16, 2013, the agency issued written notice to the petitioner advising that his FS case would remain open for a one-person household (himself). Although the petitioner requested that his two minor children be included in his FS household, the agency did not include them.
3. The petitioner's income and deductions are not in dispute here.
4. The petitioner does not reside with the mother of the children, ██████████ (MC). Their Paternity Order from December 2011 implies that legal custody of the children is jointly shared between the petitioner and MC. It also declares that physical *placement* of the children is shared between them. The breakdown of the shared placement gives the father more time with the children than the mother. The father gets the children at 3:00 p.m. on Thursdays through 8:00 a.m. on Mondays, minus a Sunday interruption for church attendance. Without counting the church interruption, the father has the children 89 hours weekly versus 79 hours for MC. I doubt that the church interruption takes the 5 hours weekly that would be required to change my finding here. See Exhibit 1B, Findings and Order in Milwaukee County Circuit Court, Case No. 07 FA 733 (12-16-11).
5. MC has had an open FS case for herself and the two girls prior to February 2011.

### DISCUSSION

The petitioner contends that the agency erred by declining to transfer his children into his FS group beginning February 2013. The federal FS rule on household composition reads 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.

(b) *Special household requirements.--*(1) Required household combinations. The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified:

- (i) Spouses;
- (ii) *A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and*
- (iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child must be considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult.

(emphasis added)

7 C.F.R. §273.1(a),(b). See also, *FS Wisconsin Handbook (FSWH)*, § 3.3.1.2 - .3, viewable at [www.emhandbooks.wisconsin.gov/fsh](http://www.emhandbooks.wisconsin.gov/fsh).

The petitioner testified that the two children live with and are under his “parental control” at the times noted in Finding #4. Thus, the children should be included in his FS household under §273.1(b)(1)(ii) above. The policy direction for placement reads as follows:

### **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** 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.

... [omits criteria for deciding a 50-50 placement case]

Only one parent can receive **FS** 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** call center.

*Id.*, 3.2.1.1.

Thus, under the code and policy, the children should be on the petitioner’s FS case going forward. Per his testimony, they live with and are primarily cared for by their father. Most importantly, the petitioner produced his court order, which establishes that he has placement more than 50% of the time.

If MC had not already received FS for the children from February through April, 2013, I would have ordered their addition to his case and issuance of supplemental FS for those months. However, the children were on MC’s FS case during the months disputed here. Unfortunately for the petitioner, FS rules and policy do not allow a person to be in more than one FS group at a time:

A person cannot be a member of more than 1 food unit and 1 **FS** group in the same month except residents of shelters for battered women and children.

*FSWH*, 3.4.1. Therefore, I cannot provide a benefit remedy to the petitioner for MC’s receipt of FS for the two children during February through April, 2013. The petitioner will have the two children added to his case for May 2013 forward.

## **CONCLUSIONS OF LAW**

1. The petitioner currently has primary placement of his two children.
2. MC already had their two children on her FS case from February through April, 2013; therefore, the petitioner could not also receive FS for these children during the same months.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the Department with instructions to remove the petitioner's two children from their mother's FS case and to add them to the petitioner's FS case effective May 1, 2013. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition 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 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 1st day of April, 2013

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\sNancy J. Gagnon  
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 April 1, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability