



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148490

PRELIMINARY RECITALS

Pursuant to a petition filed April 04, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 06, 2013, at Neillsville, Wisconsin. The record was held open for ten (10) days to allow petitioner to supply additional documentation. That documentation was timely received and marked as Exhibit 5.

The issue for determination is whether the respondent correctly determined that petitioner's minor daughters do not reside with petitioner at least 50% of the time.

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: Tom Miller

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The petitioner seeks to include her minor daughters in her FoodShare household. The county agency denied this request because the children do not reside with petitioner at least 50% of the time.
3. On March 29, 2013, the Department issued written notice to the petitioner advising that her FoodShare application was denied due to failure to verify that her minor children resided in the home.
4. The petitioner submitted a transcript of a Decision of the Outagamie County Circuit Court dated April 12, 2011, which provides for primary placement of their daughters with petitioner's ex-husband during the school year and primary placement with petitioner during the summer. Exhibit 5.

DISCUSSION

The size of a FoodShare allotment depends upon the household's size and net income. One cannot be considered part of more than one household in the same month. 7 CFR § 273.3(a). The federal rules provide no clear answer to what happens when a child lives with both parents. They do allow state agencies to create a policy where federal rules do not clearly address which parent's household the child is considered a part of, provided "the policy is applied fairly, equitably and consistently throughout the State." 7 C.F.R. § 273.1(c).

Wisconsin's policy, which is found in the *FoodShare Wisconsin Handbook*, § 3.2.1.1, provides the following guidance in these situations:

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.

These rules are different than those for BadgerCare Plus which allows each parent to receive benefits and only requires the child to live with the parent 40% of the time to receive the benefit. In FoodShare matters, the child is considered part of the household in which he primarily lives. In this case, the respondent contends that the petitioner's children live primarily with their father. The children attend school in [REDACTED], which is the school district their father lives in and which is over 160 miles from the petitioner's home.

The petitioner seeks to have her daughters considered part of her household. The county agency denied this request because the petitioner has not established that the children reside with her 50% of the time. Placement of 50% would equate to 182.5 days per year.

The petitioner argues that, if her time with her children is viewed over the course of any entire year, her *average* monthly time demonstrates that her children reside with her. I am unable to arrive at the same conclusion. I have reviewed Exhibit 5, and it comports with petitioner's testimony that during the school year, petitioner has placement of the children two weekends to every one weekend that they spend with their father. During the school year, they reside with their father during the week. Petitioner testified that she also has placement on school holidays and days off of school.

The language in Exhibit 5 seems to indicate an opposite schedule for the summer, i.e., petitioner has placement of the children weekly, as well as one weekend to every two weekends that they spend with their father. Petitioner, however, indicates at Exhibit 3 that, "The summer [schedule] is I have the children 2 full weeks to his [ex-husband's] one week." Exhibit 3, p. 1.

There are approximately 13 weeks each summer. Assuming that petitioner's reference in Exhibit 3 is correct,¹ she would have placement of the children for 9 weeks, and her ex-husband would have placement for 4 weeks. That would equate to 63 days of placement each summer. During the school year, petitioner has placement of the children for approximately 27 weekends. Assuming a two-day weekend, that results in 54 days. Petitioner also testified that she has custody during all school breaks. Based upon the school calendar included with Exhibit 5, I counted 18 days where school is closed.

As such, it appears that the petitioner has placement of her minor children 135 days each year (63+54+18). Petitioner noted in her Request for hearing that she has placement of her daughters 173 days each year; she failed to establish this at hearing, and I note that her contention of 173 is still short of the 182.5 days, or 50% of the time. Therefore, the Department's decision to not include petitioner's minor children in petitioner's household was correct.

CONCLUSIONS OF LAW

The county agency correctly excluded the petitioner's children from her household when determining her FoodShare allotment because the children reside primarily with their father.

THEREFORE, it is

ORDERED

That the petitioner's appeal 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.

¹ Calculating days of placement where summers are treated as the school year (i.e., petitioner has placement of the children weekly, as well as one weekend to every two weekends that they spend with their father) would increase her placement days annually to 155, or 42.4%. However, when weighing the vague language of the Decision (Exhibit 5) and the specific language of petitioner's Exhibit 3, I conclude that Exhibit 3 more correctly describes summer placement of the minor children.

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 30th day of May, 2013

\sPeter McCombs
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 May 30, 2013.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability