



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/148901

PRELIMINARY RECITALS

Pursuant to a petition filed April 23, 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 May 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's FoodShare allotment was properly reduced by the removal of her child from her FoodShare household and erroneous placement of that child in the FoodShare household of the father.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: L. Yang

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest a reduction in the amount of her FoodShare benefits for the month of May 2013. The reason for the reduction was that Petitioner's child was removed from her FoodShare when Petitioner's FoodShare case was pended for verification and the child placed in the FoodShare household of the father who lives in Dane County.

3. On or about March 8, 2013 Petitioner contacted the agency to inquire about the availability of child care should she obtain employment as she had a job interview coming up. The agency treated the general inquiry as a new child care application from Petitioner and requested verification of the earnings as well as proof of living residence and child support for all benefit programs. Petitioner did not get the job and never signed the child care application.
4. On March 29, 2013 the agency sent Petitioner two Notices of Decision. One denied child care for failing to complete the application. The other discontinued her FoodShare as of May 1, 2013 for failing to verify.
5. The father of Petitioner's child had an open FoodShare case as of March or April 2013 and with discontinuance of Petitioner's FoodShare effective May 1, 2013 the Dane County Department of Human Services added the child to his FoodShare case.
6. Throughout the month of April 2013 Petitioner was in contact with the Milwaukee Enrollment Services (MILES) and demonstrated via court and school records that her child lived with her and not the father and provided whatever else was needed to demonstrate that her FoodShare should continue. The case closure was reversed for May 2013 but Petitioner's daughter was now on the father's case in Dane County. Per the MILES case notes, MILES was in contact with Dane County as of April 22, 2013 to inform them of the situation and asked that the child be removed from the father's case so that the child could be included in the mother's household for May 2013. Dane County declined to do so without a fraud investigation.
7. Petitioner's child was removed from the father's FoodShare case for June 2013 and returned to the Petitioner's FoodShare case.

DISCUSSION

I am reversing the agency action. Petitioner's FoodShare household will have to include her daughter for the month of May 2013 and benefits supplemented to reflect that. It is apparent that the removal of the child from Petitioner's FoodShare household was a bit premature.

Further, when placement of children is shared, in making the determination as to which parental household is to include the child(ren) for FoodShare purposes, agencies are to employ the analysis found at *FoodShare Wisconsin Handbook (FSH)*, §3.2.1.1. If nothing else, this suggests that the decision as to which household children belong in for FoodShare purposes involves some complexity.

The evidence here demonstrates that the child lives in Milwaukee County with her mother who has Court ordered primary placement. She goes to school in Milwaukee County (the Whitefish Bay school district). A court order gives the mother placement of the child for 248 days of the year and the father has 117 overnights per year. Petitioner supplied all verification necessary to demonstrate this by April 19-22, 2013. MILES contacted Dane County Human Services but it declined to reverse its decision.

I am aware that this decision may prompt Dane County Human Services to seek repayment of some or all of the FoodShare benefits paid to the father of the child for the month of May 2013 which may, in turn, prompt an appeal by him. Nonetheless, the Division of Hearings and Appeals can only decide the case in front of it at the moment. The evidence presented for this case makes it abundantly clear that the child involved here was in the home of Petitioner at all times relevant here and should never have been removed from the mother's (i.e., Petitioner's) FoodShare household.

CONCLUSIONS OF LAW

That Petitioner's child must be included in the FoodShare household of the Petitioner for May 2013 as the evidence demonstrates that Petitioner had primary placement of the child.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to take the steps necessary to restore Petitioner's FoodShare allotment for the month of May 2013 to the level that it would have been at had the child involved here been included in Petitioner's FoodShare household. This must be done within 10 days of the date of the 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 Milwaukee,
Wisconsin, this 18th day of June, 2013

\sDavid D. Fleming
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 June 18, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability