



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTS/151912

PRELIMINARY RECITALS

Pursuant to a petition filed September 09, 2013, under Wis. Stat. § 227.42, to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on November 19, 2013, at Chippewa Falls, Wisconsin.

The issue for determination is whether the petitioner is eligible for the Caretaker Supplement if she lives in an adult family home.

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, Room 651
Madison, Wisconsin 53703

By: Kelsey Grass (Continuous)
Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Chippewa County.
2. The petitioner lives in an adult family home. Her child lives with her.
3. The petitioner receives SSI.

4. The county agency denied the petitioner's request for the Caretaker Supplement because she does not have a qualified living arrangement.

DISCUSSION

On January 1, 1998, Wisconsin Works (W-2) ended AFDC in Wisconsin. W-2 is a work program, but Supplemental Security Income (SSI) recipients by definition cannot work, so SSI recipients cannot qualify for W-2. To aid those on SSI with the financial burden of raising children, the state, acting under Wis. Stat. § 49.775, implemented the Caretaker Supplement program. It pays \$250 per month for one child and \$150 per month for each additional child to parents who receive SSI. Wis. Stat. § 49.775(3)(a). The Caretaker payments are included in the SSI State Supplement payments made to eligible recipients. Eligibility for Caretaker payments depends upon meeting the following criteria: (1) the caretaker must be an SSI recipient; (2) the child or children must meet the financial and non-financial criteria for AFDC as it existed on July 16, 1996; and (3) the child or children must not receive SSI payments themselves.. If the child has two custodial parents, both must receive SSI. Wis. Stat. § 49.775(2).

A custodial parent is a parent who resides with and has legal custody of a child. Wis. Stat. § 49.775(1)(b), citing § 49.141(1)(c). A dependent child is someone under 18 who resides with a parent. (Eighteen-year-old persons residing with a parent are considered dependent children if they attend high school or vocation school fulltime and are expected to graduate before turning 19.) The old AFDC program required that if the child is living with a parent, the residence must be one maintained by the parent as "the child's or [the parent's] own home." Wis. Stat. § 49.19(1)(a)2.a. The Department's policy concerning living arrangements, which is found at *SSI Caretaker Supplement Handbook*, § 3.1.7, states:

Recipients of CTS, both parents and children, must reside in a qualified living arrangement. The following are CTS qualified arrangements:

1. Independent home, apartment or mobile home
2. Shelter for battered woman/domestic abuse
3. Homeless
4. Hospital, short term
5. Section 202/236 housing

Section 202/226 housing refers to programs that provide affordable housing and assistance for the elderly and rental assistance for poor people.

The petitioner receives SSI and her child lives with her. The county agency denied her application for the Caretaker Supplement because she lives in an adult family group home. She disagrees with this decision because she remains responsible for her child.

A strict reading of Wis. Stat. § 49.19(1)(a)2.a. would bar benefits to those in a battered women's shelter, those who are homeless, and those in the hospital because those dwellings are not maintained by the parent as the child or parent's own home. Whatever authority the Department has to extend benefits beyond the literal language of the statute includes the authority to limit that extension, as long as the limitation is not arbitrary.

There are differences between those in an adult family home and those in a shelter or hospital or who are homeless. Persons in a shelter or who are homeless generally maintain the right to make basic decisions about their own lives. There are some rules in a shelter meant to maintain its good order, such as when one must be in for the night, who may visit, and when must turn off a musical device. But these rules, unlike rules in a group home, where residents probably are under some sort of guardianship, are not meant to provide significant control over how persons go about their day. A shelter does not—and cannot—require its residents to remain for any particular time. Like homelessness, it is assumed to be a

temporary living situation that lasts only until the immediate problem causing the living situation ends, which is also true of a hospital stay. In addition, those in a hospital usually must continue to maintain their own homes,

The Department neither intended nor was required to provide Caretaker Supplement benefits to those in an adult family home. Therefore, the agency's decision to deny that benefits to the petitioner is upheld.

CONCLUSIONS OF LAW

The petitioner is not entitled to the Caretaker Supplement benefit because she does not have a qualified living situation.

THEREFORE, it is ORDERED

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.

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, Room 651, 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 11th day of December, 2013

\sMichael D. O'Brien
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 December 11, 2013.

Eau Claire County Department of Human Services
Division of Health Care Access and Accountability