



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152091

PRELIMINARY RECITALS

Pursuant to a petition filed September 16, 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 October 10, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services the agency accounted for the correct number of children in determining Petitioner's FoodShare benefits for September 1, 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: Pang Thao-Xiong, Income Maintenance Worker
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On or about July 29, 2013, The Department of Children and Families (DCF) removed Petitioner's three children, CE, JE and XE, from Petitioner's home and placed them with their mother. (Testimony of Petitioner; Exhibit 7, pg. 17)

3. On August 5, 2013, the agency sent Petitioner a notice indicating that effective September 1, 2013, his FoodShare benefits would be reduced from \$668 per month to \$200 per month because people had left his home. (Exhibit 8)
4. On or about August 19, 2013, JE and XE returned to Petitioner's home, while CE remained with her mother. (Testimony of Petitioner; Exhibit 7, pg. 18)
5. On September 13, 2013, the agency sent Petitioner a notice indicating that effective September 1, 2013, his FoodShare benefit would go up from \$367 per month to \$526 per month, because JE and XE were returned to Petitioner's case. (Exhibit 9)
6. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 16, 2013. (Exhibit 1)

DISCUSSION

Petitioner asserts that MILES miscalculated his FoodShare benefits, because it should not have removed his three children from his case and that it erred again by only returning two children to his case.

Per §3.2.1.1 of the *FoodShare Wisconsin Handbook (FSH)*, only one parent can receive FoodShare for a child.

The *FoodShare Wisconsin Handbook* states the following guidelines with respect to joint or shared physical custody of children:

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.

...

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.

The residence of the children is not questionable. It is undisputed that in July 2013, the three children were initially removed from Petitioner's care and sent to their mother's residence, because of allegations of abuse made by the children's mother. It is also undisputed that two of the children were later returned to Petitioner's care in August 2013.

Based upon the foregoing, it is found that the agency correctly calculated Petitioner's September 1, 2013 FoodShare benefit, by including two of the three children. There is insufficient evidence to support a finding that Petitioner was the primary caretaker of the third child in September 2013, given that CE was still living with her mother due to intervention by the Department of Children and Families. (See Exhibit 7, pg. 17)

CONCLUSIONS OF LAW

The agency accounted for the correct number of children in determining Petitioner's FoodShare benefits for September 1, 2013 forward.

THEREFORE, it is

ORDERED

That 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 Milwaukee,
Wisconsin, this 23rd day of October, 2013

\sMayumi M. Ishii
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 October 23, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability