



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/152936

PRELIMINARY RECITALS

Pursuant to a petition filed October 21, 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 November 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly reduced his FS benefits effective November 1, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pang Thao Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. From June 1, 2011 – October 30, 2013, the four minor children of Petitioner and his ex-wife [redacted] were included in the Petitioner's FS group.

3. On July 8, 2013, ■ submitted an application for FS benefits, including the four children in her household.
4. The Petitioner and ■ have joint legal custody of the children. Court-ordered placement of the children is with the Petitioner from 5:00 p.m. on Thursdays through 5:00 p.m. on Sundays. This is slightly less than 50% placement.
5. Petitioner has not had actual visitation or placement of the three oldest children since March, 2013. The youngest child has had visitation/placement with the Petitioner.
6. On September 11, 2013, a fair hearing was conducted with Petitioner's ex-wife ■. As a result of that hearing, a decision was issued on October 16, 2013 finding that ■ has primary placement of three oldest children. The ALJ ordered the three oldest children to be removed from Petitioner's FS case and to transfer the children to ■'s FS group upon her re-application. See DHA Decision FOO/151366. ■ re-applied on October 22, 2013. The agency removed the three oldest children from the Petitioner's FS group and added them to ■'s FS group.
7. On October 17, 2013, the agency issued a Notice of Decision to the Petitioner informing him that his monthly FS benefit would decrease from \$935 to \$584 effective November 1, 2013.
8. On October 21, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Petitioner contends that the agency erred by transferring his three oldest children into ■'s FS group when she applied in July 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:

...

(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.

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.

The decision issued in DHA Case FOO/151366 found that the three oldest children live with ■ and have been under her "parental control" at all times since March 2013. This was based on the credible testimony of ■ and her roommate. The ALJ found that the Petitioner's placement time with the youngest child had become erratic. As a result of the testimony in that case, the ALJ ordered the agency to remove the three oldest children from the Petitioner's FS group. The youngest was to remain in his group

pending a circuit court decision regarding possible changes to the legal custody and placement of the children. That decision has not yet been rendered.

The FS 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.

The Petitioner in this case does not dispute that he has not had placement or visitation with the three oldest children since March, 2013. He testified that the children are old enough to decide whether to visit and they have chosen not to do so since March. He argues that the children should not be removed from his FS group because he wants to be able to provide food should the children decide to visit him. He has had visitation with the youngest child.

The FS policy is clear that children are to be included in the FS group of the household where they reside. There is no dispute that the three oldest children do not reside with the Petitioner. Therefore, the agency properly removed the three oldest children from the Petitioner’s FS group.

The Petitioner testified that his rent has increased and his unemployment compensation benefits were recently reduced. Petitioner was advised to send any changes in his circumstances to the agency so that his FS allotment can be reviewed.

CONCLUSIONS OF LAW

The agency properly removed the Petitioner’s three oldest children from his FS group and properly reduced his benefits effective November 1, 2013.

THEREFORE, it is ORDERED

That the petition be, and hereby 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 Milwaukee,
Wisconsin, this 11th day of December, 2013

\sDebra Bursinger
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.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability