



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/154493

PRELIMINARY RECITALS

Pursuant to a petition filed December 28, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 11, 2014, at Sheboygan, Wisconsin.

The issue for determination is whether the agency properly removed minor child JK from the Petitioner's case for December, 2013 FS benefits.

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: Kris Schmidt

Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. Petitioner's household consists of herself, her husband and two minor children. Minor child JK is Petitioner's stepchild.

3. JK's mother has not had physical placement of JK since 2011. By court order of February 29, 2012, JK's mother has rights of supervised visitation with JK 4 days/month from 10:0 a.m. – 12:00 p.m.
4. On November 27, 2013, the Petitioner completed a Six Month Report Form (SMRF) on November 27, 2013. The same day, November 27, 2013, JK's mother submitted a FS application requesting FS benefits for JK.
5. According to agency case comments, on November 27, 2013, the agency received the court order regarding JK's physical placement. As a result of receiving verification of JK's placement, the case comments state: "Updated [JK's] Benefits Received Page to receiving SNAP in another state, so that dad can receive benefits. PENDED LIVING ARRANGEMENT ON CURRENT DEMO PAGE FOR JORDAN." According to another case comment on November 27, 2013, a worker noted that JK was incorrectly added to her mother's case. The case comment further noted that the correction in JK's residence would be effective for January, 2014.
6. On November 29, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be \$38 for December, 2013 for a household of three and \$229/month effective January 1, 2014 for a household of four.
7. On December 12, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be \$229/month effective January 1, 2014 for a household of four.
8. On December 28, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

It is clear from the evidence presented that JK has not been in her mother's physical custody since at least the court order of February 29, 2012 and that the agency was aware of this at the time it processed her mother's renewal and the Petitioner's renewal. Given the circumstances and the agency's knowledge that JK was not in her mother's custody at least 40% of the time and that her father had full custody, it should not have removed JK from the Petitioner's household for FS purposes.

CONCLUSIONS OF LAW

The agency did not properly remove JK from the Petitioner's household for purposes of FS benefits for December, 2013.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to re-determine the Petitioner's FS benefits for December, 2013 based on a household of four that includes JK. The agency shall issue a new Notice of Decision to the Petitioner for December, 2013 and shall issue any supplemental FS benefits that the Petitioner is due based on that re-determination. These actions shall be taken within 10 days of the date of this 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, 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 21st day of February, 2014

\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 February 21, 2014.

Sheboygan County Department of Human Services
Division of Health Care Access and Accountability