



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/154739

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Winnebago County Dept. of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 20, 2014, by telephone.

The issue for determination is which parent should have children on his/her FS case.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Leslie Vosters
Winnebago County Dept. of Human Services
P.O. Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. In 2012 petitioner received FS for a household that included her two children. On January 18, 2013, the county notified petitioner that her FS would end February 1, 2013 because she did not complete a review. When petitioner's case closed on February 1, her children were added to their father's separate FS case (petitioner and the father were divorced in 2009).

3. On April 11, 2013, the county notified petitioner that FS were re-opened for a one-person household. The notice stated that the children were not included because they were on another FS case.
4. On January 3, 2014 petitioner contacted the county and demanded to have the children placed back on her case. The worker stated that she would review the situation.
5. Petitioner filed this appeal on January 14, 2014 requesting “an appeal of the decisions made.”

DISCUSSION

The federal FS regulations define FS household composition 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:

1. An individual living alone;;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a). The generic household definition requires that household members “live together” and “purchase and prepare” meals together. This definition does not solve the problem posed by this case, because the children live with, and eat with, both of their divorced parents.

The only other relevant instruction offered by the federal regulation is in 7 C.F.R. §273.1(c) and is an authorization to the state agencies to create policies to answer questions pertinent to household composition issues:

(c) *Unregulated situations.* For situations that are not clearly addressed by the provisions of paragraphs (a) and (b) of this section, the State agency may apply its own policy for determining when an individual is a separate household or a member of another household if the policy is applied fairly, equitably and consistently throughout the State.

In Wisconsin, the state agency has developed policy standards to determine FS household composition in cases involving children in joint custody. The policy is clear in requiring that the child cannot be a member of more than one FS group in the same month. See the FoodShare Wisconsin Handbook, §3.4.1. State policy also determines the assignment of a joint custody child to a specific household:

Children are included in the household where they reside when they are under the care and control of a parent a person's biological, step, or adoptive mother or father regardless of age. Parenthood doesn't have to be verified or other caretaker in that household. There may be situations when the residence of a child a person's biological, step, or adopted son or daughter, regardless of age, 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.

If the parents can not or will not decide, compare the parents' activities and responsibilities against the following list and determine which one is exercising more control than the other:...

I will not list the questions as they are irrelevant at this point.

As a first point, petitioner is seeking to have the children placed on her FS retroactive to the February, 2013. That cannot be done. Once timely and adequate notice of a negative action is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Adm. Code, §HA 3.05(3)(b). Petitioner had two negative actions in 2013. First, her FS closed February 1, 2013. Then her case reopened in April, but only as a household of one. She did not appeal either action within 90 days. I thus will not entertain a request to have the children added to her case retroactively.

That said, as noted in the county's fair hearing response, the appeal for current and future FS was premature. Petitioner essentially requested a review of the situation on January 3, 2013, and then appealed before the county could complete a review.

Following the hearing petitioner's mother sent a copy of the court order regarding custody and placement. In the court order petitioner was given primary placement of the children. While normally such a court order would be the deciding factor, I looked up the divorce case on the State Circuit Court Access site and discovered that currently there is a motion pending concerning placement/custody of the children (although the site does not provide specifics, I note that a guardian ad litem has been appointed, which would not occur unless the issue involved the children). In addition, petitioner is hospitalized, which might be a factor in the current dispute. It certainly raises an issue of the current placement of the children.

I will dismiss this appeal as it concerns current FS because the county, as of the hearing date, still had not been able to complete its investigation into the current placement of the children. I am certain that when the county makes its determination, the parent that does not get the children in his/her FS unit will appeal, and then the county will be able to address its determination.

CONCLUSIONS OF LAW

1. The appeal of petitioner's children's retroactive FS household status was untimely.
2. The county has not yet made a determination concerning which FS unit the children should belong to for current benefits.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 24th day of February, 2014

\sBrian C. Schneider
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 24, 2014.

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