



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/155154

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 28, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Marathon County Dept. of Social Services to deny FoodShare benefits (FS), a hearing was held on February 20, 2014, by telephone.

The issue for determination is whether petitioner's children should be part of his FS household.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Maikou Yang  
Marathon County Dept. of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner applied for FS on December 6, 2013. He requested that his children be included in the FS case.
3. Petitioner's ex-wife has an open FS case that includes the four children.

4. The county asked petitioner to fill out the child placement questionnaire. Although his answers showed close to a 50-50 placement situation, they did shade toward him having slightly more responsibility.
5. Petitioner's ex-wife's worker asked her to fill out the child placement questionnaire. As of the hearing date she had not submitted it. The record was held open for her questionnaire but none was submitted.
6. The parties divorce judgment provided for 50-50 placement. However, it also included the following: "[T]he parties agree that the Petitioner shall have placement of the two minor children he claims as exemptions at least one day more than the Respondent so as to claim head of household. The Respondent shall have placement of the two children she claims as exemptions one additional day per year than the Petitioner so she may claim head of household."

### 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 did not include the questions that follow because I find them to be irrelevant in this case. The court order is sufficient to make this determination.

The divorce court order clearly gave head of household responsibilities for two of the children to be with petitioner, and for the other two children to be with petitioner's ex-wife. It thus follows that the two children named in the court order should be in petitioner's FS household.

### **CONCLUSIONS OF LAW**

Based upon the divorce order, two of petitioner's children should be on his FS case, and the other two should be on their mother's FS case.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to move the two children listed on petitioner's divorce judgment as being with him slightly more than with their mother to be in petitioner's FS unit. The other two children shall remain on their mother's case. The county shall take this action within 10 days of this decision, with the change to occur in the next possible month.

### **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 28th day of February, 2014

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\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 28, 2014.

Marathon County Department of Social Services  
Division of Health Care Access and Accountability