



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTS/155393

PRELIMINARY RECITALS

Pursuant to a petition filed February 7, 2014, under Wis. Stat., §227.42, to review a decision by Milwaukee Enrollment Services in regard to Caretaker Supplement benefits (CTS), a hearing was held on March 12, 2014, by telephone.

The issue for determination is whether the agency erred by putting petitioner’s daughter on her mother’s case because her case was open before petitioner’s case.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Jose Silvestre
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has one daughter, D.T., whose mother is A.L. A.L. has had an ongoing benefit case with child as part of her household. Both petitioner and A.L. are Supplemental Security Income (SSI) recipients and thus can receive CTS for D.T.
3. On January 24, 2014, petitioner filed a change report showing that D.T. resides with him more than with A.L. He included a copy of a motion for change of custody to him. The agency took

D.T. off A.L.'s case and put her on petitioner's case for February, 2014. At that point A.L. complained, and the agency worker noticed that petitioner had provided a copy of a motion for change of custody but not the order that followed.

4. The order that followed petitioner's motion, dated December 30, 2011, provided for joint custody and joint placement. In addition, the Department's KIDS child support screen showed A.L. as the primary caretaker. Therefore the agency worker removed D.T. from petitioner's benefit case effective March 1, 2014 and added her back to A.L.'s case on the grounds that A.L. had D.T. on her case first. Petitioner then appealed.

DISCUSSION

Beginning January 1, 1998, with the advent of the Wisconsin Works (W-2) program, Aid to Families with Dependent Children (AFDC) ceased to exist in this state. Since W-2 is a work program, and SSI recipients by definition are unable to work, SSI recipients cannot qualify for W-2. The state thus implemented the Caretaker Supplement Program, which currently pays Supplemental Security Income (SSI) recipient parents \$250 per month for one child, and \$150 per month for additional children. The program is mandated by Wis. Stat., §49.775.

To be eligible for the CTS payments the following criteria must be met: **(1)** the caretaker must be an SSI recipient, or if both parents are in the home, both parents must receive SSI; **(2)** the child or children must meet the financial and non-financial criteria for AFDC as it existed on July 16, 1996; and **(3)** the child or children must not receive SSI payments themselves. Wis. Stat., §49.775(2).

The Department's CTS Handbook, §3.1.10, provides as follows for situation like this:

When custody of a child is shared between parents, the parent with whom the child resides the majority of the time is identified as caring for the child for CTS purposes.

When the natural or adoptive parents of a child do not live together, and have joint custody (through a mutually agreed upon arrangement or court order) and you cannot determine who the child is living with the majority of the time, act on the CTS case as follows:

1. Determine if the agreement or court order awarding joint custody designates a "primary caretaker." A parent designated as the primary caretaker is the primary person.
2. If one parent is not designated, ask the parents to decide which one is the "primary caretaker." If they decide within the 30-day processing, act on the application as based on what they decided.
3. If no decision is made within the 30 days of the application date, review the parents' activities and responsibilities to determine which parent is the primary caretaker. Use the list below:
 - a. This list is not exclusive, and there may be situations where you find additional criteria to apply.

There are cases in which these questions may be answered positively for both parents. However, in reviewing parental responsibilities and roles, usually you will find one

parent more often identified. Identify this parent as the primary person for determining eligibility.

In concurrent case no. FOO-155392, I ordered the agency to examine which parent should be listed as D.T.'s primary parent for benefit purposes. Since that determination will affect which parent's case D.T. will be under for CTS purposes, I will simply reiterate the order for this case as well.

CONCLUSIONS OF LAW

The agency erred by determining that petitioner's daughter should remain on her mother's case without first examining which parent should be listed as the primary parent following petitioner's request for a change.

THEREFORE, it is ORDERED

That the matter be remanded to the agency with instructions to determine which parent should be the primary parent for D.T. for the issuance of benefits, going through the current placement arrangement and the FS Handbook questions. The agency shall take the action within 10 days of this decision and make the determination for the next possible benefit 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 13th day of March, 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 March 13, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability