



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/156987

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 19, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Crawford County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 21, 2014, at Prairie Du Chien, Wisconsin.

The issue for determination is whether the agency erred in denying petitioner application to place his children on his FS case.

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: Kirby Krubel

Crawford County Department of Human Services  
225 N Beaumont Rd., Suite 326  
Prairie Du Chien, WI 53821

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Crawford County.
2. Petitioner and his ex-wife are divorced. They have children in common.
3. The couple has a marital settlement that states custody is shared 50/50.

4. Petitioner's wife has an open FS case with the children designated as part of her household. She receives the FS allotments for the children.
5. Petitioner applied for FS and sought to have the children placed on his FS case.
6. The agency denied the request to place the children on his FS case and tested the group as a one person group. Petitioner's income exceeded the gross income limit for one person and he was not eligible for FS.
7. Petitioner appealed the denial to place the children in his FoodShare group.

### **DISCUSSION**

It is clear that the petitioner and his ex-wife share joint legal custody and equal placement of their three minor children in-common. There is evidence in this record that physical presence changes with petitioner's work schedule. Generally, however, the children split time between the two households. Petitioner did not dispute that the placement is 50/50. Petitioner began the hearing with the proposal that his ex-wife and he split the children so that each receives FS for two children.

The petitioner's primary argument is that it is unfair that the children are excluded from his household and he gets no FS, while his ex-wife has a household including the minor children in-common and she receives FS. He did not contest the agency computation of his income stream at all.

Children can only be a member of one FS household. Where all other arrangements are essentially equal, the FS case that is already open retains the children in it, while they are excluded from the newly applying household. See, *FoodShare Wisconsin Handbook*, App. 3.2.1.1; and see in accord, 7 C.F.R. §273.3(a). Based upon a review of the record, I am satisfied that the agency tested the petitioner adequately as to 50/50 placement in the requisite manner, and that equal placement was in fact present here. Where equal, the existing FS group continues to include the children. *FoodShare Wisconsin Handbook*, App. 3.2.1.1. To do otherwise would be to violate federal FS rules. The program does not contemplate splitting children between households; or allowing both to receive FS including all minors. There is no exception under law. I have reviewed the agency action and I can find no error. The instant appeal must be dismissed.

If petitioner is able get the circuit court to designate him as the primary caretaker, or if petitioner's ex-wife will concede that, then petitioner may be able to re-apply for FS and establish eligibility for a household including his children. Similarly, if petitioner is able to establish this role through objective evidence, he may seek to persuade the agency that he is primary caretaker. As it was, petitioner only presented his statements that this was so based on their attending school nearest him and his ensuring homework gets done and his carrying health insurance for them. I suspect his e-wife might have a different perspective but she did not appear. I cannot find such statements alone so persuasive as to find error.

### **CONCLUSIONS OF LAW**

The agency did not err in denying petitioner's request to place the children on a FS case with him and remove them from their mother case.

**THEREFORE, it is**

**ORDERED**

The matter is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 30th day of May, 2014

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\sJohn P. Tedesco  
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 May 30, 2014.

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