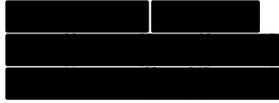




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

FOO/158925

PRELIMINARY RECITALS

Pursuant to a petition filed July 10, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services [“MiLES”] in regard to FoodShare benefits [“FS”], a Hearing was held via telephone on August 05, 2014, at Milwaukee, Wisconsin. The Hearing for this matter was held at the same time as the Hearing for the following related matter concerning the same petitioner: CTS-158926.

The issue for determination is whether petitioner’s 1 year old son may be included in petitioner’s FS household.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May, HSPC, Senior
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

OTHER PERSON PRESENT:

petitioner’s grandmother

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County, Wisconsin.
2. Petitioner previously lived with his grandmother but has recently moved and no longer lives with his grandmother (he now lives with his mother).
3. Petitioner has 1-year-old a son ["ICG"].
4. By a September 2013 Court Order petitioner has joint legal custody of ICG with ICG's mother.
5. ICG is cared for by petitioner's grandmother (not petitioner) for most of the time (3 to 4 days per week) when petitioner has physical placement of ICG.

DISCUSSION

In order for a person to get FS for a child the child must be in that person's FS household. Petitioner is requesting that ICG be included in his FS household

The basic definition of a *household* for purposes of FS is 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)(3) (2011); *FoodShare Wisconsin Handbook* ["FWH"] 3.3.1. The issue here is whether or not ICG "lives with" petitioner for FS purposes.

In cases of parents who do not live together state policy concerning who children "live with" for purposes of FS is as follows:

"Children are included in the household where they reside when they are under the care and control of a parent or other caretaker in that household. There may be situations when the residence of a child 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:

1. If the parents reside in different school districts, where does the child attend school? Who selected the school?
2. Who assists the child with homework or school-related tasks?
3. Are there tuition costs for the child's education? If so, who pays those costs?
4. If the child is enrolled in day care, who arranges for and pays these costs?
5. Who is responsible for taking the child to and from school and/or day care?
6. Which parent is listed as the contact for emergencies at the child's school or day care provider?
7. Who arranges medical and dental care for the child? Who selects the physician and dentist?
8. Who maintains the child's medical records?
9. Who initiates decisions regarding the child's future?
10. Who responds to medical or law enforcement emergencies involving the child?
11. Who spends money on food or clothing for the child when the child visits the absent parent?
12. Who disciplines the child?
13. Who plays with the child and arranges for entertainment?
14. Are more of the child's toys, clothing, etc. kept at one parent's home than the other's?

Only one parent can receive FS for a child. If it still can not be determined which food unit the child should be in, the caretaker that first applies would be eligible.”

FWH 3.2.1.1.

In this case, it is not necessary to consider the above 14 factors. This is because, although petitioner does have court ordered joint legal custody of ICG, ICG does not actually live with petitioner. The evidence in the record of this matter, primarily the testimony of petitioner and petitioner grandmother, is that ICG is cared for by petitioner’s grandmother (not petitioner) for most of the time (3 to 4 days per week) when petitioner has physical placement of ICG. It is noted that petitioner has provided a letter dated May 13, 2014 stating that petitioner “has physical custody of his two children.” However, that letter was, apparently, written prior to the time petitioner moved out of his grandmother’s home.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner’s 1 year old son may not be included in petitioner’s FS household.

ORDERED

That the petition for review herein be and the same is hereby 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 8th day of August, 2014

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 8, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability