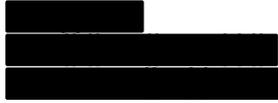




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/160871

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on October 23, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner’s FS as a household of one when her ex-husband incorrectly reported that the children were primarily residing with him.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner has two children.
3. On May 21, 2014 Petitioner’s children were added to her ex-husband’s FS case. Petitioner’s ex-husband provided a signed notarized statement from Petitioner saying that she was relinquishing

her children to her ex-husband for a short period of time until she could secure suitable housing. That letter was from April 2014.

4. Petitioner provided a copy of her current lease signed on May 28, 2014. Her two children are included on her lease.
5. Family court previously ordered joint custody with shared placement. The parents are to alternate the children every other week. The parents are also to alternate the scheduling and attending of the children's appointments.
6. Petitioner testified that because she carries the insurance through BadgerCare, she arranges and attends most the health care appointments.
7. Parents are unable to agree on an arrangement with regard to their FS accounts.
8. Petitioner was the first parent to apply for FS for the children.

DISCUSSION

No person can be a member of more than one household when determining monthly FS benefits. 7 C.F.R. §273.3. Problems arise when parents have joint custody with 50/50 placement of a child. *FS Wisconsin Handbook*, § 3.2.1.1. The handbook states that in the case of joint custody with 50/50 placement where neither parent is designated the primary caretaker, the parents can be asked to decide. *Id.* If the parents are unable to decide, then the handbook directs the agency to compare the parents' parenting activities and responsibilities against each other in order to determine which parent exercises the most control over the children. *Id.* If the agency is still unable to make a determination, then the parent who first applied for FS for the children is eligible. *Id.*

In this case the agency is incorrect in leaving both children on the father's FS case. The court documents show that parents have joint custody with 50/50 placement. The letter the father provided was from April 2014. It was only for a temporary period for the mother/Petitioner to secure housing. Her lease shows that since that letter she secured housing.

In this case the parents have been unable to come to an agreement. The mother/Petitioner stated that their family court case is ongoing as well. Therefore, the agency must determine which parent exercises the most control or participates more in the various parenting activities. The agency states that they believe both parents participate equally in parenting the children. This is precisely what family court has ordered. Following the policy, if the parents participate equally in the parenting duties, then the child should be placed on the parent's FS case who applied for FS first. The agency and Petitioner agree that Petitioner applied for FS for the children before the father.

Petitioner did not dispute any of the other underlying assumptions and numbers the agency used in calculating her monthly FS benefits. Petitioner's only disagreement was the household size. Petitioner believed that her children should be included in her household.

CONCLUSIONS OF LAW

The agency incorrectly placed the children on Petitioner's ex-husband FS case. Petitioner's two children should be included in her FS household.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency to add both children to Petitioner's FS case. The agency has ten days to comply with this order.

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 Milwaukee,
Wisconsin, this 27th day of October, 2014

\sCorinne Balter
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 October 27, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability