



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/161891

PRELIMINARY RECITALS

Pursuant to a petition filed November 13, 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 December 02, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly removed the Petitioner's children from her FS group.

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: Simone Johnson
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. In January, 2014, Petitioner's two minor children EL and KL were removed from her home and placed in foster care.

3. On February 24, 2014, the agency received a report of the birth of a third child to the Petitioner. Minor child HH was added to the Petitioner's case.
4. On April 15, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would decrease due to EL and KL being removed from her case.
5. From April 18, 2014 – November 4, 2014, EL lived with his maternal grandmother.
6. On October 10, 2014, the Petitioner contacted the agency and reported KL is living with her father and EL is living with his grandmother.
7. On November 5, 2014, Dispositional Orders were filed in Milwaukee County Circuit Court for KL and EL. The Orders establish that the children are with the Petitioner Sunday at 6:00 p.m. through Thursday at 3:30 p.m. The children are with their father from Thursday at 3:30 p.m. through Sunday at 6:00 p.m.
8. On November 10, 2014, the Petitioner contacted the agency and reported that KL and EL are back in her household. The Petitioner was advised that she needed to provide verification to the agency. The agency pended the case for verification of the residence of the children.
9. On November 11, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would continue to receive FS benefits for a household of two including herself and HH. The notice informed the Petitioner that EL and KL receive benefits on another case.
10. On November 11, 2014, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of the residence of KL and EL. Due date for the verification was November 21, 2014.
11. On November 13, 2014, the Petitioner was at the agency and was advised that she needs to provide verification of the residency of EL and KL to the agency.
12. On November 17, 2014, the children's father submitted the November 4, 2014 court order to the agency.
13. On December 2, 2014, the Petitioner submitted the November 4, 2014 court order to the agency.
14. On December 4, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits for a household of four including herself, HH, EL and KL, effective January 1, 2015.
15. On December 10, 2014, the children's father contacted the agency to inquire why the children were removed from his case. According to case comments, the father reported that the court order had not changed and the children were in his custody. According to case comments, the agency worker could not find the court orders and so removed EL and KL from the Petitioner's FS group because "custody is 50/50 but the father requested benefits for the children first."
16. The Petitioner schedules all medical, dental and therapy appointments for EL and KL. The Petitioner provides the majority of the children's transportation needs.
17. On December 11, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits for a household of two including herself and HH effective January 1, 2015.
18. On November 13, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

With regard to the residence of children that are subject to a court custody order, the regulations instruct the agency 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. . . 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.

. . .

Only one parent can receive FS for a child. If you still can not determine which food unit the child should be in, the caretaker that first applies would be eligible. Use the best information available to make your decision, and document in case comments the basis of your determination.

In this case, the agency removed the children from the Petitioner's case based on a statement by the father that the court order had not changed and that he retained custody of the children. The Petitioner had already submitted the court order to the agency but the agency worker could not find the document. The father's statements to the agency were inaccurate. The court order had changed on November 5, 2014 and the Petitioner was awarded custody from Sunday at 6:00 p.m. through Thursday at 3:30 p.m. In addition, the father never had custody of EL.

The court order demonstrates that the Petitioner has custody of the children 55% of the time while the father has custody 45% of the time. The evidence demonstrates that the Petitioner provides the duties of a primary caretaker. The agency failed to do a proper analysis of the status of the children's residence when it removed the children from the Petitioner's case "because the father applied for benefits first." The agency presented no evidence to support its position that the father is the primary caretaker or that he applied for benefits first.

Based on the evidence, I conclude the agency improperly removed EL and KL from the Petitioner's FS group. Because the Petitioner did not provide the requested verification of the children's residence to the agency until December 2, 2014, adding the children back to her case will impact benefits effective January 1, 2015.

CONCLUSIONS OF LAW

The agency improperly removed EL and KL from the Petitioner's FS group.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to add EL and KL to the Petitioner's FS group and to re-determine the Petitioner's FS benefits effective January 1, 2015 for a household of four that includes the Petitioner and her three minor children. The agency shall issue a new Notice of Decision to the Petitioner with new appeal rights regarding its determination. The agency shall also issue any supplemental FS benefits due to the Petitioner for January, 2015. These actions shall be taken as soon as possible but no later than January 12, 2015.

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.

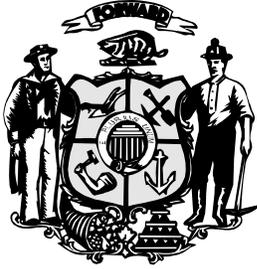
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 7th day of January, 2015

\s\sDebra Bursinger
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 January 7, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability