



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/163153

PRELIMINARY RECITALS

Pursuant to a petition filed January 13, 2015, 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 January 29, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's minor children should be included in petitioner's FoodShare household.

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: Jose Silvestre

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner and PH have two children, EL and KL. EL and KL were part of petitioner's FS household; pursuant to a decision in Division of Hearings and Appeals case no. FOO/161891

(January 7, 2015), EL and KL were removed from petitioner's FS household and added to PH's FS household.

3. PH has physical placement of EL and KL at least 52.4% of the time.
4. Petitioner appealed the removal of EL and KL from his FS household on January 13, 2015.

DISCUSSION

One cannot be considered part of more than one household in the same month. 7 CFR § 273.3(a). The federal rules provide no clear answer to what happens when a child lives with both parents. The rules do allow state agencies to create a policy where federal rules do not clearly address which parent's household the child is considered a part of, provided "the policy is applied fairly, equitably and consistently throughout the State." 7 C.F.R. § 273.1(c). Wisconsin's policy, which is found in the *FoodShare Wisconsin Handbook*, § 3.2.1.1, provides the following guidance in these situations:

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 cannot 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 you still cannot determine which food unit the child should be in, the caretaker that first applies would be eligible

The petitioner and PH have two children. EL and KL were initially included with petitioner's FS household; pursuant to a decision in Division of Hearings and Appeals case no. FOO/161891 (January 7, 2015), EL and KL were removed from petitioner's FS household and added to PH's FS household. That decision was based upon a finding that PH had physical placement of the children 55% of the time, versus petitioner's placement of 45%. Indeed, the court order specifies that PH's placement is Sunday at 6:00

p.m., through Thursday at 3:30 pm; this totals 93.5 hours per week, or 55.65%. The petitioner testified that PH's placement is actually Sunday at 10:00 p.m., through Thursday at 2:00 pm; this totals 88 hours per week, or 52.4%. As such, whether the court order or petitioner's own testimony is used as a basis, the record before me establishes that PH has physical placement of the children more often, though barely more, than the petitioner. The respondent testified that he also has placement of the children while PH is working, and that he overall has the children more than she does. However, nothing was stated with any specificity. Without any corroborating evidence, petitioner failed to establish the veracity of this claim. Because a child can only be in one household at a time, and because the petitioner has failed to establish any error on the part of the respondent in placing EL and KL in PH's FS household, petitioner's appeal must be dismissed.

CONCLUSIONS OF LAW

The petitioner is not entitled to claim EL and KL as part of his FoodShare household because they are correctly included in the FS household of their mother.

THEREFORE, it is

ORDERED

That this matter 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.

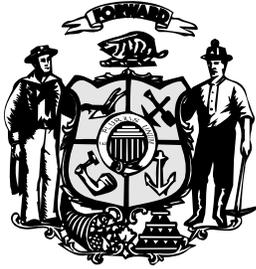
APPEAL TO COURT

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 3rd day of March, 2015

\sPeter McCombs
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 3, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability