



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/164484

PRELIMINARY RECITALS

Pursuant to a petition filed March 05, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services (the agency) in regard to FoodShare benefits (FS), a hearing was held on May 07, 2015, at Oshkosh, Wisconsin.

NOTE: The record was held open until the end of the day to allow the agency to submit a summer visitation schedule (Exhibit 2), paystubs (Exhibit 8) and a Notice of Decision dated February 11, 2015 (Exhibit 9).

On May 7, 2015, ALJ Ishii contacted the Petitioner and obtained permission to contact Winnebago County to request documents relating to the determination of his February 2015 benefits, because Exhibit 9 related to a determination of his March 2015 benefits.

The agency indicated that after the hearing, it made a correction to the Petitioner's Foodshare budget and submitted a Budget Printout for February 2015 (Exhibit 10) and a Notice of Decision dated May 7, 2015, advising the Petitioner that he would be receiving benefits in the amount of \$194.00 per month from February 2015 going forward. (Exhibit 11)

The issue for determination is whether the agency correctly determined the Petitioner's FoodShare benefits for February 2015 forward.

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: Jeanie Ortiz

Winnebago County Department of Human Services
220 Washington Ave.

PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner first applied for benefits in October 2014. (Testimony of Ms. Ortiz)
3. On February 11, 2015, the agency sent the Petitioner a notice indicating that effective March 1, 2015, his FoodShare benefits would be increased from \$16.00 per month to \$194.00 per month. (Exhibit 9)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 5, 2015. (Exhibit 1)
5. The Petitioner is not elderly (over age 60), blind or disabled. (Testimony of Petitioner)
6. Petitioner had no income for February 2015. (Exhibit 10)
7. Petitioner pays rent in the amount of \$431.00 per month and he incurs a heating expense. (Exhibit 9, testimony of Petitioner)
8. Petitioner also pays child support in the amount of \$239.51 per month. (Exhibit 9 and 10)
9. Petitioner does not receive any unearned income. (Testimony of Petitioner)
10. Petitioner's son is currently part of his mother's case. (Testimony of Ms. Ortiz)
11. Petitioner and the mother of his son entered into a Stipulation and Order after Judgement, which was adopted by the circuit court on October 18, 2006. This agreement described the visitation schedule and established shared custody and placement of the child. (Exhibit 3)
12. The child's primary address of residence is with his mother. (Exhibit 3)
13. Petitioner is required to pay the child's mother \$40.00 for winter clothing. (Exhibit 3)
14. On November 16, 2009 a court commissioner for Winnebago County Circuit Court issued a decision granting the Petitioner one weekend (not a holiday weekend) per year, thus amending the October 18, 2006 agreement, which allowed the Petitioner weekend visitation on Sunday evening and early Friday morning, only. (Exhibits 3 and 4)
15. The November 16, 2009 decision also granted the Petitioner visitation for one weekend evening (presumably a Friday or Saturday evening, given the aforementioned arrangements) on or near the mother's birthday. (Exhibit 4)
16. The November 16, 2009 changed no other provisions of the October 16, 2008 Stipulation and Order after Judgement. (Exhibits 3 and 4)

DISCUSSION

Post-hearing the agency agreed with Petitioner's assertion that he had no income to budget for February 2015. (See Exhibit 10) According to Exhibits 10 and 11, the agency determined the Petitioner to be eligible for the maximum allowable FoodShare allotment, for a household of one person, \$194 per month. *See FoodShare Wisconsin Handbook (FSH) §8.1.2*

Thus, Petitioner's remaining issue was whether the agency correctly determined his household size.

The agency asserts that the Petitioner may not include his son in his household and as such, the Petitioner's correct household size is one. The Petitioner asserts that his household size should be two, including his son.

Per §3.2.1.1 of the *FoodShare Wisconsin Handbook (FSH)*, only one parent can receive FoodShare for a child. It is undisputed that the child is already on his mother's FoodShare case and has been so since March 2009.

Petitioner asserts that he has physical placement of his son three more days a year than the mother, and so the child should be removed from the mother's case and placed on his case. The agency argues the contrary.

Both parties seem to miss the point that the primary question is where the child *resides* and that in order to answer that question in a situation where there is shared physical placement, a determination needs to be made regarding which parent is the primary caretaker.

The *FoodShare Wisconsin Handbook* states the following guidelines with respect to joint or shared physical custody of children:

3.2.1.1 Joint or Shared Physical Custody of Children

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.

Emphasis added

...

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. Use the best information available to make your decision, and document in case comments the basis of your determination. If you still cannot determine which food unit the child should be in, call the [CARES](#) call center.

Looking at the court document in Exhibit 3, it is clear that the intent of the agreement was to establish 50/50 custody and placement through a rather complicated visitation schedule. The Petitioner, in his testimony, agreed that this was the case.

However, the first paragraph of that stipulation and order indicates that, "the child's address shall be the address of petitioner mother". It is reasonable to interpret that to mean the mother's residence is to be considered the child's primary residence. This interpretation is further supported by the fact that the court ordered the child's mother to be responsible for the child any vacation and sick days that occur during a school week, three of five days. It is also supported by the fact that the court ordered the Petitioner to pay the child's mother \$40.00 a year for the child's winter clothing in paragraph 6 of the stipulation and order.

There is nothing in the subsequent decision issued by the court commission that changes those provisions.

It should be noted that the Petitioner does not receive child support for his son, which further undermines the claim that he is the primary caretaker of his son. On the contrary, the Petitioner is the one paying child support. The Petitioner also gave some indication in his testimony that the child's mother receives health insurance through the State and is responsible for obtaining health insurance coverage for the child.

If that is the case, then that also supports the contention that the mother is the child's primary caretaker and that the child resides with her.

Based upon all of the foregoing, it is found that the agency correctly determined that the Petitioner is not the primary caretaker of the child; that the mother's residence is the primary residence of the child and that the Petitioner's household size is one person.

CONCLUSIONS OF LAW

The agency correctly determined the Petitioner's FoodShare benefits for February 2015 forward.

THEREFORE, it is ORDERED

That the petition 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 Milwaukee,
Wisconsin, this 8th day of May, 2015

\sMayumi M. Ishii
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 8, 2015.

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