



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/165582

PRELIMINARY RECITALS

Pursuant to a petition filed April 21, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 12, 2015, at Sheboygan, Wisconsin.

The issue for determination is whether the agency correctly calculated the petitioner's monthly FS benefits in April 2015.

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: Cheri Nennig

Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. On March 12, 2015 the agency sent the petitioner a notice stating that they needed proof of child support for one of the petitioner's children. The listed due date was March 23, 2015.

3. On March 18, 2015 the agency sent the petitioner a notice stating that effective April 1, 2015 her FoodShare (FS) benefits would end. The explanation on the notice stating that the agency had received the petitioner's six-month report form. If she had submitted the necessary proof, her FS benefits would be processed. If she had not submitted the necessary proof, she would have a gap in benefits unless sent in the needed proof right away.
4. On March 24, 2015 the agency sent the petitioner another notice stating that they needed proof of child support for one of the petitioner's children. The listed due date was April 2, 2015.
5. On March 27, 2015 the agency received the requested verification.
6. On April 13, 2015 the agency sent the petitioner a notice stating that effective April 1, 2015 her monthly FS benefits were \$326. The petitioner and one of her children were included in her FS group. The notice further stated that effective May 1, 2015 the petitioner's monthly FS benefits were \$480. The petitioner and both of her children were included in her FS group in May 2015.
7. When the petitioner's case was scheduled to close an agency in a different county added one of the petitioner's children to the child's father's case for April 2015.
8. Effective May 1, 2015 the child was added back to the petitioner's FS case.
9. On April 23, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

DISCUSSION

One cannot be considered part of more than one household in the same month. 7 CFR § 273.3(a). Wisconsin provides the following policy for determining which parent's FS household to include a child:

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. *FoodShare Wisconsin Handbook*, § 3.2.1.1.

In this case an agency in a different county added one of the petitioner's children to the child's father's case for April 2015 when the petitioner's case was scheduled to close effective April 1, 2015. The petitioner contends that the child never resided with the father in April, and that the agency should have never removed the child from her FS case. At various points in March the petitioner's FS case was scheduled to close effective April 1, 2015. The agency likely saw that the petitioner's FS case was scheduled to close effective April 1, 2015, and moved the child from the petitioner's case to the father's case. Ultimately, the petitioner provided the proper verification, and her case never closed.

Even if what the petitioner argues is true, I can find no regulation or policy that allows me to include the child in her household for April 2015. The federal regulations specifically provide that one cannot be considered apart of more than FS one household in the same month. Adding the child to the petitioner's household for April 2015 would be including the child in two FS households for that month. This is prohibited. Effective May 1, 2015 this child is included in the petitioner's FS household.

I further note that I am unclear if the system automatically moved the child to the father's case when the petitioner's case was scheduled to close in the system or if the father reported that the child was living with him for April 2015. If the petitioner believes that the father made a false report, the petitioner may make a fraud report against the father. The agency can then conduct an investigation.

CONCLUSIONS OF LAW

The agency correctly calculated the petitioner's monthly FS benefits for April 2015.

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 21st day of May, 2015

\sCorinne Balter
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 May 21, 2015.

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