



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTS/168336

PRELIMINARY RECITALS

Pursuant to a petition filed August 31, 2015, under Wis. Stat. § 227.42, to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on September 23, 2015, at Madison, Wisconsin.

The issue for determination is whether the county agency correctly removed the petitioner's son from petitioner's Caretaker Supplement case effective October 1, 2015 because the mother of her son () was Court ordered to have primary placement of their son.

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: , ES Supervisor
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES #) is a resident of Dane County who has a son, BB, Jr.
2. The mother of BB Jr. (BB) is

3. Based upon petitioner's August, 2015 six month report (SMRF), on August 3, 2015, the county agency added petitioner's son to his Caretaker Supplement Case which provided a \$250 payment to petitioner for the month of August, 2015.
4. On August 10, 2015, the county agency received an e mail form the Dane County Child Support office stating that the petitioner did not have primary placement of his son, and that there was a Court order that granted the mother, [REDACTED] L. [REDACTED], to have primary placement of their son.
5. The county agency sent a notice on or about August 14, 2015 to petitioner to submit verification to the agency by August 24, 2015 that the mother ([REDACTED] [REDACTED]) agreed that their son lived with the petitioner as his primary placement.
6. The petitioner failed to provide such verification to the agency by August 24, 2015 or even by the date of the September 23, 2015 hearing date.
7. The county agency sent a notice to the petitioner stating that his Caretaker Supplement would discontinue effective October 1, 2015, due to his not being the primary placement for his son, and that BB Jr. would be placed on his mother's Caretaker Supplement case.
8. ES Supervisor [REDACTED] [REDACTED] sent a copy of the August 18, 2014 Court Paternity Order in Case No. 2014 PA [REDACTED] which stated that the mother, [REDACTED] [REDACTED] had primary placement of BB Jr. and not the petitioner.
9. The petitioner failed to timely file any Motion to obtain primary placement of his son. Petitioner was unable to provide any evidence to establish that he obtained primary placement of his son.

DISCUSSION

Beginning January 1, 1998, with the advent of the Wisconsin Works (W-2) program, AFDC ceased to exist in this state. Since W-2 is a work program, and SSI recipients by definition are unable to work, SSI recipients cannot qualify for W-2. The state thus implemented the Caretaker Supplement Program, which currently pays SSI recipient parents \$250 per month for one child, and \$150 per month for additional children. The program is mandated by Wis. Stats. §49.775.

To be eligible for the CTS payments the following criteria must be met: **(1)** the caretaker must be an SSI recipient, or if both parents are in the home, both parents must receive SSI; **(2)** the child or children must meet the financial and non-financial criteria for AFDC as it existed on July 16, 1996; and **(3)** the child or children must not receive SSI payments themselves. Wis. Stats. §49.775(2). Beginning January 1, 1998, with the advent of the Wisconsin Works (W-2) program, AFDC ceased to exist in this state. Since W-2 is a work program, and SSI recipients by definition are unable to work, SSI recipients cannot qualify for W-2. The state thus implemented the Caretaker Supplement Program, which currently pays SSI recipient parents \$250 per month for one child, and \$150 per month for additional children. The program is mandated by Wis. Stats. §49.775.

A person is eligible for a Caretaker Supplement (CTS) benefit if, among other things, **the person is a custodial parent of a dependent child.** Wis. Stat. § 49.775(2)intro. (2001-02); Medicaid Eligibility Handbook, Appendix 31.1.0. A "**dependent child**" is defined by law to be a person who resides with a parent and who is **under the age of 18** or, if the person is full-time student at a secondary school or a vocational or technical equivalent and is reasonably expected to complete the program before attaining the age of 19, is under the age of 19. Wis. Stat. §§ 49.141(1)(c) & 49.775(1)(b).

The Child Care Handbook section 3.1.10 (Joint Custody Arrangements) provides that when a child is shared between parents, the parent with whom the child resides the majority of the time is identified as caring for the child for CTS purposes. If a Court Order designates a "primary caretaker," then that parent designated as the primary caretaker is the primary person for eligibility for Caretaker Supplement eligibility and benefits.

In the instant case, as indicated in the above Findings of Fact, petitioner was unable to refute with testimony or evidence that he does not have primary placement of his son for Caretaker Supplement eligibility purposes. See Finding of Fact #8 above. Accordingly, based upon the above, I conclude that the county agency correctly removed the petitioner's son from petitioner's Caretaker Supplement case effective October 1, 2015 because the mother of her son ([REDACTED] [REDACTED]) was Court ordered to have primary placement of their son.

CONCLUSIONS OF LAW

The county agency correctly removed the petitioner's son from petitioner's Caretaker Supplement case effective October 1, 2015 because the mother of her son ([REDACTED] [REDACTED]) was Court ordered to have primary placement of their son.

THEREFORE, it is ORDERED

The petition for review herein be and the same 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 9th day of December, 2015

\sGary M. Wolkstein
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 December 9, 2015.

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