



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOO - 175486

PRELIMINARY RECITALS

Pursuant to a petition filed on July 12, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Richland County Health and Human Services regarding FoodShare benefits (FS), a hearing was held on August 17, 2016, by telephone from Madison, Wisconsin.

The issue for determination is whether the county agency correctly denied the petitioner's request to include minor children [REDACTED] and [REDACTED] in her FoodShare household after they were already included in their mother's household.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Richland County Health and Human Services
221 W Seminary St.
PO Box 673
Richland Center, WI 53581

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Richland County.
2. An Order for Support dated March 16, 2016, joint legal custody and placement of [REDACTED] and [REDACTED] to their parents, [REDACTED] and [REDACTED]. Exhibit P.
3. [REDACTED] and [REDACTED] are included on their mother's FS case.
4. The county agency did not allow the petitioner to include [REDACTED] and [REDACTED] in her FoodShare household because they were already included in their mother's household.

DISCUSSION

The petitioner seeks to have [REDACTED] and [REDACTED] considered part of her FoodShare household. This would increase the amount of FoodShare she receives because benefits are based upon household size and net income. The county agency denied her request because both children are already part of their mother's FS household. The parents [REDACTED] and [REDACTED] have joint legal custody and placement of their children.

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 contends that it is unfair not to let her claim the children. Whether or not the policy is unfair, I am bound by it, and [REDACTED] and [REDACTED] must be considered part of their mother's FoodShare household as long as placement remains equal. At present, the only way to change the present arrangement is to get the mother of [REDACTED] and [REDACTED] to agree to a change or to convince a circuit court judge to order one.

CONCLUSIONS OF LAW

The petitioner cannot claim [REDACTED] and [REDACTED] as part of her FoodShare household because they are already included in their mother's household and the parents of [REDACTED] and [REDACTED] have joint legal custody and placement of the children.

THEREFORE, it is

ORDERED

The petitioner's appeal 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, **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 16th day of September, 2016

\s _____
Peter 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 September 16, 2016.

Richland County Health and Human Services
Division of Health Care Access and Accountability