



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/170224

PRELIMINARY RECITALS

Pursuant to a petition filed November 20, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Marathon County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on January 13, 2016, by telephone. A hearing set for December 9, 2015 was rescheduled at the petitioner’s request. The record was held open two weeks at the petitioner’s request for submission of additional documents; the documents were received on January 27, 2016.

The issue for determination is whether petitioner’s son lived with her in 2015.

PARTIES IN INTEREST:

Petitioner:



;

Respondent:

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

By:

Marathon County Dept. of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Marathon County.
2. Throughout 2014 and 2015 petitioner received FS with her son included in the FS unit. In October, 2015, the county investigated the living situation. The county determined that petitioner’s son did not live with her during periods in 2014 and 2015.

3. By notices dated November 5, 2015, the county informed petitioner that she was overpaid a total of \$1,292 in August and September, 2014, and April through October, 2015, on the basis that her son was included incorrectly in her FS household, due to client error, claim nos. [REDACTED] (\$236 for August and September, 2014) and [REDACTED] (\$1,056 for April through October, 2015).
4. Petitioner's son did not reside with her during August and September, 2014, and August through October, 2015. He lived with her in 2015 through early July.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

The federal FS regulations define FS household composition as follows:

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a). Obviously, if petitioner's minor son was not living with her he should not have been included in her FS household.

Petitioner does not dispute the 2014 portion of the overpayment, or the portion from August through October, 2015. She disputes the period April through July, 2015. She testified that her son lived with non-stop in 2015 until she moved to [REDACTED] after being evicted from her apartment on [REDACTED] in [REDACTED] in July.

Evidence compiled by the county shows that petitioner's son lived with his aunt until the end of 2014, moved back with petitioner, and then returned to his aunt in March, 2015. The March date is based upon Investigator [REDACTED]'s contacts with the aunt and petitioner. The contact with the aunt is hearsay, and petitioner vehemently denies that she told Mr. [REDACTED] that her son moved in with his aunt in March.

Following the hearing petitioner presented a copy of a police report from April, 2015. While a police report is hearsay, it is as credible a piece of hearsay as there is. On April 13, 2015, police were called to petitioner's address on [REDACTED] and found petitioner and the son in question; the son was refusing to go to school. There was no hint in the report that the son was just visiting. Coupled with the letter from the son's school assistant principal, in which he reports that he did home visits to the [REDACTED] residence and the son appeared to be living there, I conclude that the best evidence is that the son was living primarily with petitioner at least until she was evicted.

There are problems with the county's evidence. For example, the original complaint to the county that led to the investigation said that the son moved in with his aunt in May, 2015, not March. The investigation includes a meeting with a neighbor in [REDACTED], who told Mr. [REDACTED] that petitioner lived in [REDACTED] since January, 2015. Petitioner clearly had her apartment on [REDACTED] until the summer; petitioner probably spent a lot of time in [REDACTED], but it is not clear at all that she lived there prior to July, 2015. The county also provided a hearsay statement from the father of the boy in question, but it does not shed light on the boy's whereabouts in the spring, 2015.

It is very likely that the boy was moving back and forth between petitioner and his aunt in the spring, but only petitioner sought FS for him. I conclude, therefore, that he properly was on petitioner's case through July, 2015. The overpayment for the months of April through July should be rescinded, but it is affirmed for the two 2014 months and for August through October, 2015.

CONCLUSIONS OF LAW

1. Petitioner was overpaid \$236 FS in August and September, 2014, and \$406 FS in August, September, and October, 2015, because she failed to report the absence of her son from her household in those months.
2. Petitioner was not overpaid FS in the months of April through July, 2015, because the best evidence is that her son's primary residence remained with petitioner during those months.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to modify overpayment claim no. [REDACTED] by removing the months of April through July, 2015 from the claim, thereby reducing it from \$1,056 to \$406. Claim no. [REDACTED] is affirmed. The county shall take the action within ten days of this decision.

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 1st day of February, 2016

\sBrian C. Schneider
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 February 1, 2016.

Marathon County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability