



FH
[REDACTED]

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

In the Matter of:

[REDACTED]

DECISION

FOP/143113

PRELIMINARY RECITALS

Petitioner filed a petition on August 16, 2012 under Wis. Admin. Code § HA 3.03 (September 2001) to review a decision by the Columbia County Health and Human Services Department ["County"] to establish an alleged overpayment of Food Stamps ["FS"] against her. A Hearing was held via telephone on September 28, 2012.

The issue for determination is whether the following Claim may be established against petitioner for an alleged overpayment of FS: Claim # [REDACTED] for the time period April 1, 2012 to June 30, 2012 in the total amount of \$800.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Wisconsin Department of Health Services
Room 650
1 West Wilson Street
P.O. Box 7850
Madison, Wisconsin 53707-7850.

BY: Wendy Metcalf, ES Supervisor
Jeanette Gessner, ESS

Columbia County Health and Human Services Department
2652 Murphy Road
P.O. Box 136
Portage, Wisconsin 53901

OTHER PERSON PRESENT:

Investigator, O'Brien & Associates

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Columbia County, Wisconsin.
2. The County established the following Claim against petitioner for an alleged overpayment of FS: Claim # for the time period April 1, 2012 to June 30, 2012 in the total amount of \$800.00.
3. The County claims that the alleged overpayment detailed in *Finding of Fact #2*, above, resulted from the fact that petitioner lived with a man who had income and his income allegedly put petitioner over the FS income limit.

DISCUSSION

Income includes all household income from wherever source, excluding only certain specific items not relevant here. 7 C.F.R. §§ 273.9(b) & (c) (2011); *FoodShare Wisconsin Handbook* ["FSWH"] 4.3.1. Earned income of any household member age 18 years old or older is to be included in the FS household income. 7 C.F.R. § 273.9(c)7. (2011); FSWH, 4.3.2.2.3.

The basic definition of a *household* for purposes of FS is 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)(3) (2011); FSWH 3.3.1.1. In this case petitioner lives with a man and that man has income. Petitioner does not deny any of this. However, petitioner testified that she and the man do not customarily purchase food and prepare meals together for home consumption. She testified that she is no relation to the man and that they do not have any children in common. The County presented no evidence to rebut petitioner's testimony.

Based on a preponderance of the credible evidence in the record of this matter it must be concluded that petitioner and the man do not customarily purchase food and prepare meals together for home consumption. Thus, they are not part of the same FS household. It follows that the man's income cannot be included in the income of petitioner's FS household and the alleged overpayment in this matter cannot be sustained.

CONCLUSIONS OF LAW

For the reasons discussed above, the following Claim may not be established against petitioner for an alleged overpayment of FS: Claim # for the time period April 1, 2012 to June 30, 2012 in the total amount of \$800.00.

NOW, THEREFORE, it is

ORDERED

that this matter be REMANDED to the County and that, within 10 days of the date of the *Decision*, the County not establish the following Claim against petitioner for an alleged overpayment of FS: Claim # [REDACTED] for the time period April 1, 2012 to June 30, 2012 in the total amount of \$800.00.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of October, 2012

Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals

c: Gretchen/wendy Metcalf, Columbia County Health & Human Services - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 2, 2012.

Columbia County Health & Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability