



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/143151

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Waushara County Human Services in regard to FoodShare benefits (FS), a hearing was held on September 27, 2012, at Wautoma, Wisconsin.

The issue for determination is whether the Department erred in determining that petitioner is liable for a FoodShare overpayment in the amount of \$1,121 for the period 10/17/11 to 5/31/12.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Roxanne Binkowski
Waushara County Human Services
205 W Elm
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waushara County. He lives on County Road BC.

2. Petitioner applied for FoodShare and BadgerCare+ benefits on October 14, 2011. At that time he reported that his household was a two-person household comprised of himself and his daughter KM who was 17 years old. [REDACTED] is KM's mother.
3. KM resides with [REDACTED] on [REDACTED]. She sleeps regularly at the home of [REDACTED]. She keeps her clothing and belongings at [REDACTED]'s home. Her driver's license lists the [REDACTED] home as her residence. KM stops at petitioner's house several times each week to feed horses or to sometimes stay for dinner. She stays overnight no more than one night per week. She has had friends over at petitioner's home on only one occasion.
4. In April 2012, O'Brien and Associates conducted an investigation and concluded that KM does not reside with petitioner and that petitioner's household is a one -person household.
5. The Department sent Petitioner a Notice of FoodShare Overissuance indicating that petitioner is liable for a FoodShare overpayment in the amount of \$1,121 for the period 10/17/11 to 5/31/12.
6. Petitioner filed a timely appeal.

DISCUSSION

FoodShare benefits are determined by household income and the size of the household. The county agency seeks to remove the petitioner's child from her household for FoodShare purposes because it contends that he lives primarily with his father.

FoodShare regulations hold that a household is composed of 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).

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.

In this case, it is clear that KM lives with her mother. She only visits her father's home, and many of the times she visits she goes over only to feed the horses and does not even see her father. She rarely sleeps there. She does not keep her belongings there or have friends over. She clearly and without hesitation at the time of the hearing testified that she lives with her mother. Petitioner was mistaken when he reported her residing with him for FoodShare purposes.

The Department agrees that petitioner was eligible for FS during the period in question and appropriately determined the overpayment based only on the amount issued in excess of that to which petitioner was otherwise eligible as a one-person household.

CONCLUSIONS OF LAW

Petitioner's household was a one-person household for FS purposes, and the benefits he received on behalf of his daughter who did not reside with him are required to be paid back to the Department in the amount of \$1,121 for the period 10/17/11 to 5/31/12.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

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 5th day of October, 2012

John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals

c: Waushara County Human Services - email
Department of Health Services - email



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The preceding decision was sent to the following parties on October 5, 2012.

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