



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/145830

PRELIMINARY RECITALS

Pursuant to a petition filed December 6, 2012, 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 24, 2013, by telephone.

The issue for determination is whether the father of petitioner's son lived with her while she was receiving benefits.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Maikou Yang

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 # [REDACTED]) is a resident of Wood County. She lived in Marathon County until recently.
2. Petitioner received FS in 2011 and 2012, initially for herself only and later for herself and her son who was born in December, 2011.

3. In September, 2012, the agency received information that the father of the child, A.R., was living with petitioner. An investigation ensued, and the agency determined that petitioner and A.R. had been living together since June, 2011.
4. By notices dated November 13, 2012, the county informed petitioner that she was overpaid a total of \$3,495 in FS from August 1, 2011 through September 30, 2012, claim nos. [REDACTED] and [REDACTED]. The overpayments were determined by adding A.R. to the FS group for those months, averaging his income from state wage match records, and calculating the correct FS that should have been issued. Petitioner's FS closed effective October 1, 2012.
5. A.R. was listed on petitioner's list at both residences where petitioner lived since June, 2011. Petitioner and A.R. provided inconsistent and contradictory information concerning his actual residence, and petitioner at least admitted that A.R. was at her residence with regularity. Items belonging to A.R. were in the home when the investigator walked through.

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). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

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). FS rules provide further as follows:

The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

- (i) Spouses;
- (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and
- (iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent.

7 C.F.R. §273.1(b)(1); see also FS Handbook, Appendix 3.3.1.2.

The issue in this case is whether the agency has proven by a preponderance of the evidence that A.R. lived with petitioner from June, 2011 through September, 2012. I conclude that it does.

As noted, A.R. was listed on petitioner's lease at both residences. The first landlord confirmed that A.R. lived in the residence. The second landlord, who testified at the hearing, stated that it was "our understanding" that A.R. did not live at the residence although he was often there. The landlord of the second residence was a management company and thus did not have regular contact with the tenants.

Petitioner presented copies of receipts showing alleged rental payments made by A.R. to a different landlord named [REDACTED]. The problem is that the receipts contradict the information previously provided by petitioner.

Petitioner told the investigator that A.R. lived with his brother on [REDACTED]. When the investigator went to the [REDACTED] address, A.R. was there. A.R.'s presence does not prove he lived there as petitioner could have called him and told him the investigator was on the way. A.R. told the investigator that he lived at [REDACTED] with his brother [REDACTED] and his wife.

The rent receipts are not signed by [REDACTED] and they say that the rent is for an address on [REDACTED] not [REDACTED] ([REDACTED] is several blocks from the address on [REDACTED]). Furthermore, the receipt numbers are out of order. The receipt dated 1-1-12 is no. 540280. The receipt dated 5-1-12 is no. 54021_, with the final number cut off on the copy. The receipts, therefore, are suspicious not only because they show a different landlord and address, but the later one should have a higher receipt number than the earlier one.

I note that initially the county's economic support supervisor agreed to delete the overpayment when petitioner presented the receipts. However, the supervisor was unaware of the investigation report at that point, and after she saw the investigation report she decided to go ahead with the claim.

I will uphold the claims. It is evident that petitioner and A.R. lived together since at least June, 2011 when they signed the first lease, and since petitioner was pregnant with A.R.'s child it is presumed that they purchased and prepared meals together (and petitioner never asserts that they did not because she never reported his presence).

CONCLUSIONS OF LAW

The agency correctly determined an FS overpayment caused by petitioner's failure to report the father of her child living in the home.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 served and 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, 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 31st day of January, 2013

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 31, 2013.

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