



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/145916

PRELIMINARY RECITALS

Pursuant to a petition filed December 14, 2012, under Wis. Admin. Code, §HA 3.03, to review a decision by the Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on January 9, 2013, by telephone.

The issue for determination is whether petitioner and his wife are liable for an overpayment paid to their daughter. Please note that initials are used in the decision for confidentiality purposes.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Alma Lezama
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In September, 2011, petitioner's 20-year-old daughter E.F. and her child moved in with petitioner and his wife after being evicted from her former residence.
3. On September 28, 2011, E.F. applied for FS for herself and the child. E.F. did not report on her application that she lived with her parents. Petitioner and his wife were not FS recipients and did not receive FS at any time during the ensuing months.

4. In September, 2012 E.F. reported living with her parents. The agency obtained petitioner's income information and determined that he and his wife should have been included in E.F.'s FS household, and that their income would have made E.F. ineligible for FS during the entire period of September 29, 2011 through August 31, 2012.
5. On November 12, 2012, the agency sent separate notices to petitioner, his wife, and E.F. informing them that they were overpaid FS totaling \$4,837 for the period September 29, 2011 through August 31, 2012, claim no. [REDACTED]. All three were listed as liable for the claim.

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.

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.

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). Petitioner and his wife should have been included in E.F.'s FS household because E.F. was under age 22 during the period in question, and thus E.F. was overpaid FS.

With regard to who is liable for the overpayment, the FS Handbook, App. 7.3.1.2 reads as follows:

All adult or emancipated minor food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual

moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

Neither petitioner nor his wife was a member of the food unit that was overpaid. E.F. was the only adult household member. Therefore only she is liable for the overpayment.

CONCLUSIONS OF LAW

Petitioner and his wife are not liable for the FS overpayment paid to their daughter E.F. because they were not FS unit members when the overpayment occurred.

THEREFORE, it is ORDERED

That the matter be remanded to the agency with instructions to remove petitioner and his wife G.F. as liable individuals for claim no. [REDACTED] Only their daughter E.F. is liable. The agency shall take the action within 10 days of this decision.

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 15th day of January, 2013

\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 January 15, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability