



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/146248

PRELIMINARY RECITALS

Pursuant to a petition filed December 28, 2012, under Wis. Admin. Code, §HA 3.03, to review a decision by the Northern Income Maintenance Consortium to recover FoodShare benefits (FS), a hearing was held on February 19, 2013, by telephone.

The issue for determination is whether petitioner's son was living with her.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Beulah Garcia
Northern IM Consortium
10610 Main St., Suite 224
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Illinois. She formerly resided in Vilas County.
2. Petitioner received FS in 2011 and 2012 with her teen age son included in the household. Petitioner presented a court order granting the parents 50-50 placement of their son when she applied for BC+, and benefits were granted based upon the order.
3. In 2012 petitioner had a review. During the review the worker became aware that petitioner's son lived primarily with his father and attended high school in [REDACTED] approximately 70 miles from petitioner's residence. He lived in [REDACTED] with his father at least since 2010.

4. The worker determined that petitioner did not have sufficient placement with her son during the period January 1, 2011 through November, 2012, and thus he should not have been included in her FS household. By a notice dated December 26, 2012, the agency informed petitioner that she was overpaid \$2,938 in FS payments from January, 2011 through June, 2012, claim nos. [REDACTED] and [REDACTED].

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). The FS Handbook, App. 3.2.1.1 provides that the parent with primary placement is the one who can receive FS for a child. It then provides a process for determining the correct parent if the child lives with each parent 50% of the time.

In this case petitioner's son did not reside with her 50% of the time during the period in question. It does not matter that the court order provided for 50-50 placement. Eligibility is based upon which parent the child actually lives with. Since petitioner's son did not live with her 50% of the time, he could not be included in her FS household.

Petitioner testified that she did not know that the court order was insufficient. Her lack of knowledge is immaterial, however. Had she reported that her son was primarily living with his father, the matter would have been resolved regardless of her knowledge of the rules. The law requires the agency to recover any overpayment of FS; the law does not require the failure to be intentional or fraudulent.

CONCLUSIONS OF LAW

Petitioner was overpaid FS in 2011 and 2012 because she failed to report that her son was living with his father primarily.

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 22nd day of February, 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 February 22, 2013.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability