



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/146651

PRELIMINARY RECITALS

Pursuant to a petition filed January 17, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on February 13, 2013, by telephone.

The issue for determination is whether petitioner's husband lived with her in 2012.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Katherine May
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 2011 petitioner received FS for herself, her husband D.H., and their two children. Following a review in November, 2011, FS closed effective December 1, 2011 because household income was over the limit.
3. On December 31, 2011, petitioner reapplied for FS. She reported that D.H. moved out on December 27. FS were granted for a three-person household.

4. In December, 2012, the agency investigated whether D.H. and petitioner really were separated. The investigator found that petitioner did not remove D.H.'s name from the lease at her former residence; however, when petitioner moved into her current residence in late 2012 D.H. was not included on the lease. In 2012 D.H. continued to use petitioner's address for mail. He registered to vote on June 1, 2012 using petitioner's address. He started a job in January, 2012, and used petitioner's address with his new employer. No report of his moving out was made to the child support agency.
5. The agency determined that D.H. was living with petitioner the entire year of 2012. It obtained D.H.'s income information to calculate the FS that would have been issued if he had been included in the household. By a notice dated January 16, 2013, the agency informed petitioner that she was overpaid \$4,922 in FS from January 1 through December 31, 2012, claim no. [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).

FS rules provide 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.

Under the federal law, if D.H. lived with petitioner and the children he must be included in the FS household. Petitioner denied that he lived with her during 2012, testifying that he legitimately moved out. She did not dispute the calculations.

This case contains all of the indicia of a separation of convenience by parents whose income puts them just over the limits to receive benefits. They are together until an action that causes benefits to end. Almost immediately one of the parents moves out and the other parent reapplies. The absent parent has no alternative address, and when asked where he lives the remaining parent cannot give a straight answer, saying only that he lives with various friends or relatives, a claim that conveniently cannot be verified. No report is made to the child support agency because if that agency was informed it would seek to obtain child support from the absent parent. When the agency starts investigating his whereabouts the remaining

parent either reports that he is back in the home or takes an action to remove him from the lease (or in this case to not include him on a new lease).

Two things make this case difficult for petitioner to prevail. First, it would be one thing if D.H. moved out and simply took no action with regard to his address. However, he started a new job a month after he allegedly moved out and he registered to vote, but he still reported his address to be the same as petitioner's address. Couples that break up simply do not continue to work in tandem on each other's behalf, so it makes no sense that he would continue to report petitioner's address to new employers and to the state. Second, the management company that handled petitioner's former address, when asked by the investigator, reported not knowing if D.H. was there or not. Petitioner stated that the management company told her that she would have to have a new credit check if D.H. moved out, but that seems like a convenient excuse for not reporting his absence. The management company would have no legal basis for breaking the lease unless petitioner failed to pay her rent, and since the owner was told about his move and did not disapprove (see the owner's letter provided by petitioner), it would make no sense for the management company to take such a hard line.

I give little weight to the letter provided by the property's owner. As she lives in North Carolina, she has no way of knowing who was living in the residence. Her letter is based entirely on statements made by petitioner, not actual evidence that D.H. lived there or not.

I conclude that the preponderance of the evidence shows that petitioner's husband did not move out as she reported, and thus she was overpaid FS because his presence and income was not included. The timing of her report that he moved out along with having no credible alternative address to where he moved are the major factors, along with the documentary evidence showing that he never changed his address.

CONCLUSIONS OF LAW

Petitioner was overpaid FS because her husband was not included in her case although he never moved out as reported.

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 19th day of February, 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 February 19, 2013.

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