



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/146832

PRELIMINARY RECITALS

Pursuant to a petition filed January 23, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Juneau County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a hearing was held via telephone on February 21, 2013.

The issue for determination is whether the following Claim may be established against petitioner for alleged overpayments of FS: Claim # [REDACTED] for the time period June 2012 to December 2012 in the total amount of \$2,930.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: April Lee, ESS

Juneau County Department of Human Services
Courthouse Annex
220 E. LaCrosse Street
Mauston, WI 53948

OTHER PERSON PRESENT:

Greg Thiele, Investigator, O'Brien & Associates

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Juneau County.
2. The County established the following claim against petitioner for alleged overpayments of FS: Claim # [REDACTED] for the time period June 2012 to December 2012 in the total amount of \$2,930.00.
3. The County claims the alleged overpayments were caused because petitioner lived with adult JW, petitioner failed to report this, and JW had income which put petitioner over the FS income limit.

DISCUSSION

The burden is on the state, in this case represented by the County, to show by a preponderance of the credible evidence that the overpayment occurred as alleged. Wis. Admin. Code § HA 3.09(4) (September 2001). The County has failed to do this.

The only substantial evidence the County offered to support its claim that petitioner lived with JW during the time period of the overpayment is a written report from *O'Brien & Associates* dated November 12, 2012. However, the only supportive evidence contained in that report is a statement that the Wisconsin CCAP system showed that JW used petitioner's address on March 23, 2012 and a statement by petitioner that the heat in the home where JW lived had not been turned-on because JW had been planning to move in with petitioner. In the report petitioner acknowledges that JW had been living with her for the past 2 weeks (since about late October 2012), that he had moved most of his personal items into her home, and that they were engaged to be married in June 2013 -- but none of this shows that JW was living with petitioner prior to late October 2012.

At the February 21, 2013 Hearing petitioner testified that JW did not live with her for June 2012, July 2012, August 2012, and September 2012 and that JW used her address in March 2012 because he has issues with collection agencies.

Given the above it cannot be concluded by a preponderance of the credible evidence that petitioner lived with JW during the entire time period of the overpayments. Accordingly, the alleged overpayments cannot be sustained.

The County might be able to establish an overpayment claim against petitioner for the time periods that petitioner acknowledges she did live with JW.

CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct to establish the claim listed in *Finding of Fact #2*, above, against petitioner for the following alleged overpayments of FS: Claim # [REDACTED] for the time period June 2012 to December 2012 in the total amount of \$2,930.00.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the County, and that the County NOT establish the following claim against petitioner for alleged overpayments of FS: Claim # [REDACTED] for the time period June 2012 to December 2012 in the total amount of \$2,930.00.

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 12th day of March, 2013

\sSean P. Maloney
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 March 12, 2013.

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