FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/147644

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 27, 2013, at Janesville, Wisconsin.

The issue for determination is whether respondent correctly determined that petitioner is liable for an FS overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Pat Nixon
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:
Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Rock County.
2. Petitioner's parents have resided at [redacted], Janesville, Wisconsin, since approximately 2004.

3. In June, 2011, petitioner and her child moved in with petitioner's parents after being evicted from her former residence.

4. During the periods of at least October, 2010 through September, 2011 and October, 2011, through June, 2012, petitioner received FS benefits for herself and her child after he was born in August, 2011. Petitioner did not report that she lived with her parents.

5. In May, 2012, respondent learned that petitioner was residing with her parents. A request for verification of the parents' wages was sent by respondent with a due date of June 6, 2012. No verification was received by respondent. The agency subsequently determined that petitioner's parents should have been included in petitioner's FS household, and that their income would have made petitioner ineligible for FS during the entire period of October, 2010 through September, 2011 and October, 2011, through June, 2012.

6. On or about January 4, 2012, the agency sent separate notices to petitioner, her mother, and her father informing them that they were overpaid FS totaling $6791.00 pursuant to the following claims:

   Claim No. [redacted]; October, 2010 - September, 2011; $3347.00

   Claim No. [redacted]; October, 2011 - June, 2012; $3444.00

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, § 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, § 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's parents should have been included in petitioner's FS household because petitioner was under age 22 during the period in question, and thus petitioner was overpaid FS.

With regard to who is liable for the overpayment, the FS Handbook, § 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.

Pursuant to the foregoing, petitioner and her parents were, involuntarily, members of the food unit that was overpaid.

This brings us to the issue of the establishment of the overpayment. For administrative hearings, the standard of proof is preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case by establishing facts sufficient to overcome the county agency's evidence of correct action. However, the agency is required to meet its burden for each month of the alleged overpayment period.

I begin with October, 2010 through June, 2011. The evidence in this case is largely circumstantial and rests significantly an initial assumption that petitioner lived with her parents at their Blaine avenue home since 2004. Both case comments and the investigative report contain references to this assumption. See, Exhibit 2, p. 7 and p. 10. There is no direct evidence that petitioner lived at Blaine Avenue between October, 2010 and June, 2011. In fact, petitioner testified that she lived on Memorial Drive during much of that 2010-2011, period, and indicated that she had been evicted from that property in June of 2011. Public records substantiate C.H.'s testimony; Rock County Circuit Court case number 2011 SC 001512 reflects an order of eviction issued on June 10, 2011.

I am further concerned by the conclusory nature and errors contained within the Result of Investigation report prepared by O'Brien & Associates, and provided by the respondent as Exhibit 2, p. 7. The conclusion indicates that petitioner and her child have lived with petitioner's parents at the Blaine Avenue property since 2004. First, petitioner's child was not even born until August of 2011. And, more importantly, *nothing* in the report verifies petitioner's residence at any location prior to 2012. Cobbling together assumption upon assumption, the report's author assumes that since petitioner's parents rented the Blaine Avenue home since 2004, their daughter, the petitioner, must have lived there ever since. Despite having had a telephone conversation with petitioner as part of the investigation, it is notable that the investigator apparently never even asked petitioner about her residence history. This is all the more surprising considering that the investigation was apparently intended to substantiate a historical overpayment. As a final note, the report references a conversation with D.W., the father of petitioner's child, and relates that D.W. told the investigator that he is filing for a divorce. However, in testimony at hearing petitioner indicated that she has never been married to D.W. I find the accuracy and comprehensiveness of the report to be completely lacking, and not at all supportive of the respondent's case. Based on the evidence submitted, it is apparent to me that the county agency has failed to sustain its burden in terms of establishing an overpayment for the months of October, 2010 through June, 2011.

Petitioner testified at hearing that she resided with her parents for approximately 6 months in 2011. Following that six month period she lived sporadically with her sister, was homeless for a time, and later

moved to an apartment on Milton Avenue in 2012. The agency presented no testimony or documentation refuting this historical claim. The respondent did offer testimony that information regarding petitioner's living situation was inconsistent, but that alone is not sufficient to meet its burden of proof regarding an overpayment. Accordingly, I conclude that petitioner was living at the Blaine Avenue property with her parents from June, 2011 through November, 2011, and that petitioner's parents should have been included as a member of petitioner's FS household for those 6 months.

Finally, there is no documentation presented establishing petitioner's residency at Blaine Avenue during the months of December, 2011, through June, 2012. In light of testimony to the contrary, I do not share the agency's assumption that once in the home, petitioner was there for the entirety of the two overpayment periods. Without any direct or even circumstantial evidence regarding the months of December, 2011 through June, 2012, the agency did not meet its burden here. Thus, the county agency must restrict the petitioner's overpayment liability to the time period of June, 2011 through November, 2011.

CONCLUSIONS OF LAW

Petitioner is liable for an FS overpayment pertaining to the period of June, 2011 through November, 2011, as she was a member of an FS household that included her parents.

THEREFORE, it is **ORDERED**

That the matter be remanded to the agency with instructions to partially rescind that portion of FS overpayment claim number [redacted] pertaining to FS payments made between October, 2010 and May, 2011. The agency shall also partially rescind that portion of FS overpayment claim number [redacted] pertaining to FS payments made between December, 2011, and June, 2012. The agency shall provide new notice to the petitioner of the revised FS overpayment calculations specific to the months of June, 2011 through November, 2011. The agency shall take all actions Ordered herein 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 22nd day of April, 2013

_____

\sPeter McCombs
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 April 22, 2013.

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