



FH



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

In the Matter of



DECISION

FOP/147908

PRELIMINARY RECITALS

Pursuant to a petition filed March 11, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 28, 2013, at Janesville, Wisconsin. The hearing record was held open for five days for the petitioner to submit a copy of her boyfriend's apartment lease; no such document was received.

The issue for determination is whether the county agency correctly determined that the petitioner was overpaid \$3,782.00 in FS from January, 2012, through October, 2012. More specifically, the question is whether Ambrouisa Cole (AC) was a member of the petitioner's household during the overpayment period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services

1 West Wilson [REDACTED]

Madison, Wisconsin 53703

By: Mary Hartung

Milwaukee Enrollment Services

1220 W Vliet St

Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a current resident of Rock County.

2. The petitioner received FS for a household of between 4 and 6 persons from at least January, 2012, through October, 2012. FS benefits totaling \$3,782.00 were issued during the January, 2012, through October, 2012, period.
3. In determining the petitioner's FS for the months referred to in Finding #2, the agency did not include AC in the petitioner's household, because she did not report him as being in her household. AC had earned income during these months. AC and petitioner have children in common.
4. The county agency determined in March, 2013, that AC had been residing with the petitioner from January, 2012, through October, 2012. When AC's income was added to the petitioner's other household income, the result was that the petitioner was overpaid FS every month during the January, 2012, through October, 2012, period.
5. On March 4, 2013, the county agency issued a Notification of FS Overissuance and worksheet to the petitioner, advising that she had been overpaid \$3,782.00 for the January, 2012, through October, 2012, period (claim # [REDACTED]). Exhibit 2.
6. The petitioner and her children resided at [REDACTED] throughout the overpayment period.
7. AC resided at [REDACTED] throughout the overpayment period.

DISCUSSION

I. AN FS OVERPAYMENT MUST BE RECOVERED, REGARDLESS OF FAULT.

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook (*FSWH*), § 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also *FSHW*, § 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. *FSHW*, § 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

II. AN OVERPAYMENT OCCURRED FROM 1/1/12 THROUGH 10/31/12.

When two adults with minor children-in-common reside together (and with the children), the federal regulations require that they be treated as one FS household. 7 C.F.R. §273.1(b); *FSWH*, 3.3.1.2. The county agency contends that the petitioner, AC, and their children resided together throughout the stated overpayment period. The petitioner contends that AC did not live with her. Neither the arithmetic of the agency's overpayment determination nor the amount of AC's income is in dispute.

The petitioner's sole evidence as to AC's residence during the overpayment period is the self-serving testimony of petitioner and AC. Petitioner argues that she and AC do share the same address, but live in separate units. Respondent contends that the home is not a multiple unit dwelling, but petitioner maintains that this is, indeed, the case. The record was held open to allow petitioner time to submit copies of the leases pertaining to the property, but nothing was received as of the date of this Decision. No documentation was proffered to support an alternate address for AC. I did not find the petitioner's testimony credible.

The county agency noted that AC applied for FS benefits himself on October 12, 2011, using the same address as petitioner. The agency further produced multiple documents showing AC at the petitioner's [REDACTED] [REDACTED] address throughout the overpayment period. Exhibit 2. Based on the foregoing, I conclude that the petitioner did live with AC during the overpayment period, and that his income was properly added to the household's income in the overpayment claim.

CONCLUSIONS OF LAW

The petitioner was overpaid \$3,782.00 in FS from January 1, 2012, through October 31, 2012, due to client error.

NOW, THEREFORE, it is ORDERED

That the petition herein be 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 15th day of May, 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 May 15, 2013.

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