



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/148370

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 26, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Jefferson County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on June 12, 2013, by telephone. Hearings set for April 30 and May 21, 2013 were rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly determined that petitioner's husband should have been in her FS household.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Susan Zoellick  
Jefferson County Dept. of Human Services  
874 Collins Rd.  
Jefferson, WI 53549

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County. She formerly lived in Jefferson County.
2. Petitioner received FS MA for herself and two sons. In 2010 she moved to an address on [REDACTED] Street in [REDACTED]. She reported that her husband lived elsewhere.

3. In May, 2012 the agency received a referral from petitioner's property manager that her husband was living in the home. Following an investigation the agency determined that petitioner's husband had been in the home the entire time that petitioner lived at the [REDACTED] address.
4. The agency obtained petitioner's husband's wage information and recalculated eligibility retroactively. By notices dated February 28, 2013, the agency informed petitioner that she was overpaid a total of \$8,282 in FS from April, 2010 through August, 2012, claim nos. [REDACTED], [REDACTED], and [REDACTED].
5. Petitioner's husband was in the residence on a daily basis, including the day that the investigator visited. He purportedly rented a room from petitioner's mother, but nevertheless was involved with his children regularly. Petitioner became pregnant with a third child with her husband in early 2012.

### 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). 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, Appendix 3.3.1.2.

While spouses who live together must be included in the FS household, so too do parents and children, and thus petitioner's husband's relationship with his children is as important as his relationship with his wife. If petitioner's husband was in the home, he had to be included in the FS group, and if so, it is undisputed that his income would have made petitioner ineligible for most FS she received.

Every indication shows that this was a separation of convenience for benefit purposes. Petitioner never told her worker about this unusual situation that her husband was around daily but resided with her mother. Petitioner's husband's alternative address was a conveniently difficult one to verify. While usually the alternate address in cases such as this is a relative, this case is unusual in that the relative was his estranged wife's mother, a remarkable circumstance given that they allegedly separated because it was "too dangerous for my children" for the parents to stay together. See petitioner's statement received by the Division of Hearings and Appeals on June 7, 2013. The property manager told the investigator that petitioner's husband was there the entire time petitioner lived at the [REDACTED] Street address. While the property manager's statement is hearsay, it is corroborated by petitioner's admission that he was there every day and the fact that he was there when the investigator arrived. Petitioner had a third child conceived during this period of estrangement, and as is very common in situations like these, petitioner reported that he was back in the home almost immediately after she realized that she was being investigated.

For purposes of the FS program, this was an intact family. I can find no separation from the children whatsoever. He should have been included in the FS household, and thus FS issued to petitioner was an overpayment. Petitioner argues that the claim should not go back to 2010, but that is the best date possible based upon the property manager's statement. Certainly petitioner's claim that he started spending more time there only in late 2011 has no more reliability than the property manager's statement.

This decision might have been easier if any of the witnesses, including the property manager, the neighbors, petitioner's sister, petitioner's mother, or petitioner's husband had actually testified. Without them I have to rely solely on the evidence given to me, and that evidence shades toward the conclusion that petitioner's husband was in the home.

### **CONCLUSIONS OF LAW**

The agency correctly determined that petitioner was overpaid FS because she failed to report that her husband was in the home.

**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 537 . 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 June, 2013

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\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 June 19, 2013.

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