



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/149384

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Marathon County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on June 20, 2013, by telephone.

The issue for determination is whether petitioner was overpaid FS because she failed to report the father of her youngest child as living in the home.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Maikou Yang
Marathon County Dept. of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner resides with her three children. The father of the youngest child is P.W.
3. On June 6, 2012, petitioner reported that she had moved to a new address. Although she did not say so, the new address was P.W.'s residence. Later in 2012 petitioner and P.W. reported to the paternity court that they lived together. The county requested an investigation on petitioner's

- residence, and the investigation concluded that petitioner and P. W. lived together since November, 2011.
4. The agency obtained P.W.'s income information and determined that if they lived together, the household was overpaid FS from January through August, 2012.
 5. By a notice dated May 13, 2013, the agency informed petitioner that she was overpaid \$8,025 in FS from January 1 through August 31, 2012, claim no. [REDACTED].
 6. Petitioner and P.W. did not move in together until June, 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.

The agency based the start date of petitioner and P.W. living together as November, 2011 based upon his statement to the investigator. The investigator did not testify at the hearing, but P.W. did. He testified that the investigator told him that if they stayed together at least three nights in a row they were living together. He responded that if that was the rule then they were together since November, 2011.

However, he testified further that actually such stay-overs were unusual, that while they did spend nights together there were also days and even weeks when petitioner did not stay at his residence during the period from November, 2011 through June, 2012. The two older children rarely stayed overnight. Petitioner, P.W., and petitioner's sister all testified that petitioner's primary residence during that period was with petitioner's sister.

Based upon the evidence I conclude that petitioner did not live with P.W. prior to June, 2012. Thus there was an overpayment, but only for the months of July and August, 2012 as P.W. would not have been added to the case until July based upon the June change. I note that it is unclear why there was no overpayment in September or October; the agency ended the overpayment August 31, so I accept that there was no overpayment during those months even though they were living together.

CONCLUSIONS OF LAW

Petitioner was overpaid FS because she was living with her child's father, but only for the months of July and August, 2012.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to amend overpayment claim no. [REDACTED] to include only FS issued in the months of July and August, 2012, and to rescind the overpayment for the months of January through June, 2012. The county shall take the action and inform petitioner of the new claim amount 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 1st day of July, 2013

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 1, 2013.

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