



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/149659

PRELIMINARY RECITALS

Pursuant to a petition filed May 30, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on July 09, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the petitioner received an overpayment of FS that must be repaid because he failed to report living with his mother.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Patricia DeLessio
230 West Wells Street, Room 800
Milwaukee, WI 53203

Respondent:

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

By: Dean Landvatter

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

PRELIMINARY RULINGS

Attorney DeLessio objected to Exhibit #A, the Investigation Report made by Fraud Investigator Kent Demers, and specifically as to the comments made by Zoning Coordinator for the City of Kenosha, as hearsay statements. This objection is sustained.

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County. His date of birth is 2/8/91.
2. Petitioner received FS on his own case from the period of December 5, 2010 through January 31, 2012.
3. From December 15, 2010 through December 31, 2012 petitioner resided at [REDACTED], [REDACTED].
4. From December 15, 2010 through December 31, 2012 petitioner's mother resided at [REDACTED], [REDACTED].
5. Petitioner does not have a lease for this address at [REDACTED], and has not paid rent to his mother for same. The petitioner's mother is the owner of the building where they reside at [REDACTED].
6. On December 11, 2012 the agency received a complaint that petitioner was residing with his mother at [REDACTED].
7. On January 10, 2013 the complaint was referred for investigation. The investigation led the agency to conclude that petitioner was residing with his mother at [REDACTED].
8. On March 25, 2013 the agency issued three notices of FS overissuance to petitioner. FS Overpayment Claim # [REDACTED] was for the period of December 15, 2010 to December 31, 2010 in the amount of \$109. FS Overpayment Claim # [REDACTED] was for the period of January 1, 2011 to December 31, 2011 in the amount of \$2352. FS Overpayment Claim # [REDACTED] was for the period of January 1, 2012 to December 31, 2012 in the amount of \$2240.

DISCUSSION

The overissuances at hand are based on the agency's assertion that petitioner's mother and he resided together, but she was not included in his FS household. The federal FS defines "household" at 7 C.F.R. §273.1(a). Included is a special definition that is the basis for the agency's action and reads as follows:

(b) *Special household requirements.--(1) Required household combinations.* 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. A child must be considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult.

7 CFR 273.1(b)(1).

The *FoodShare Wisconsin Handbook*, §3.3.1.3, also interprets the above:

The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses and spouses.

2. Biological, adoptive, or step-parents and their children under the age of 22, and
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

Thus, if petitioner and his mother are residing together, she would have to be considered a member of his FS household (and vice versa) and her income budgeted with his, even if petitioner was purchasing and preparing meals separately.

For administrative hearings, the standard of proof is preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by the agency was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence of correct action.

The agency presented its investigation report (Exhibit A) detailing its findings upon an interview with the petitioner and a walk through of the home. The petitioner freely showed the investigator the lower floor where he lives, and the upper floor where his mother and her boyfriend live. There was no dispute that the property records show this address classified as a two-family dwelling. There was no dispute that petitioner did not pay rent or utilities, and did not have a lease for his 'rental' of the lower floor. There was a dispute about whether or not there were doors with locks separating the units, and the aforementioned objection about whether or not this dwelling meets state code for two-family dwellings. However, I find that whether this dwelling meets the code is not the question to answer here. The question here is how they are living amongst that dwelling. The petitioner had ready access to show the upper unit to the investigator, is living there rent-free, without a lease, and is financially or otherwise dependent on his mother for living there as she is covering his rent and utilities. There is also nothing to show that these two "units" have different unit designations for purposes of mailing or address designation, e.g., "upper" and "lower" or "#1" or "#2".

The petitioner testified that he always purchased and ate food separately from his mother, and that there was a lock on the door to his "unit." The petitioner did not present any testimony or documentation that proved that the agency's calculations were incorrect.

The clear language of the FS rules state that if a person under 22 years of age is living with his natural parent they must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so. I find, based on the totality of the evidence presented, that petitioner was living with his mother during the overpayment period. Therefore, the overpayment determination is upheld. Petitioner is reminded that if he has an open FS case, the repayment can be made through an offset of any current FS if that is preferable to making cash payments.

CONCLUSIONS OF LAW

The petitioner received an overpayment of FS that must be repaid because he failed to report living with his mother.

THEREFORE, it is

ORDERED

That the petition for review 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 Milwaukee,
Wisconsin, this 16th day of July, 2013

\sKelly Cochrane
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 July 16, 2013.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability
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