



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/150612

PRELIMINARY RECITALS

Pursuant to a petition filed July 11, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Crawford County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on August 22, 2013, by telephone.

The issue for determination is whether petitioner's husband lived with her during the period January 1, 2012 through February 28, 2013.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Mandy Chesebro
Crawford County Dept. of Human Services
225 N Beaumont Rd., Suite 326
[REDACTED], WI 53821

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Crawford County.
2. Petitioner received FS for herself and two children in Crawford County since September, 2011. In early 2013 the county began an investigation concerning the residence of the children's father. After the investigation the county concluded that the father (petitioner's ex-husband) lived in the residence. After obtaining his income information, the county informed petitioner by two notices

dated June 19, 2013 that she was overpaid \$3,479 in FS from January 1, 2012 through February 28, 2012, claim nos. [REDACTED] and [REDACTED].

3. Petitioner was divorced in 2007. She had her second child with her ex-husband in 2010. Although there is a child support order in Illinois for the first child, no child support case was filed for the second child.
4. Petitioner resides in a home valued at \$330,000, owned by family friends. She reports that she pays \$300 per month rent and does the maintenance and cleaning, and she acknowledges that her ex-husband actually pays her the \$300 monthly for the rent. She reported that her ex-husband resided in a room in a [REDACTED] owned by his sister.
5. Petitioner's ex-husband, throughout this period, consistently spent time at the home. He did the maintenance including lawn mowing. He gave that address when he was stopped for speeding in December, 2012, and he used that address in business relationships (specifically with Snap-On Tools). He operates an [REDACTED] in [REDACTED]; petitioner and he were listed as co-owners with city in 2011, but their names were taken off the city record in 2012 and replaced by the names of his parents.
6. Neighbors believe that petitioner and her ex-husband live together at her address. School records have them at that address.
7. The county added petitioner's ex-husband to her case beginning April 1, 2013. She continued to be eligible for FS at approximately \$150-200 monthly less than previously.

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).

FS rules provide 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. Thus if a parent lives with his children, he must be included in the FS household. Important for this case is that the issue is not the relationship between the parents, but the relationship between parent and children.

Petitioner acknowledges that because of cultural and religious beliefs she and her ex-husband hold themselves out as a couple to the community and to their neighbors. She thus was not surprised that neighbors believed that they live together. In 2011 when the lube shop opened they took out an ad in the local paper that implied that they were an intact family, and thus I have no problem finding that to the community they were an intact family. Clearly petitioner's ex-husband has been unhindered in reporting that he lives at the house, and it is clear that he is actively involved with his two children on a regular basis (a January, 2103 Facebook post from him states "I can never sleep when the girls aren't with me"). He pays the rent at petitioner's home.

I conclude that the county correctly determined that petitioner's ex-husband should have been included on her case throughout 2012 and into 2013 (and probably before 2012 but the claim only goes back to January 1, 2012). Petitioner probably thought legitimately that her ex-husband did not need to be on the case because she considered herself to be separated from him (again, however, Facebook posts by both after New Year's Eve described what appeared to be an ongoing relationship, and they admit to taking a trip to Las Vegas together in June, 2013). However, it is evident that petitioner and her ex-husband essentially live with their two children even if they are not in a relationship themselves, and thus both should have been on the case.

CONCLUSIONS OF LAW

Petitioner's ex-husband should have been included on her FS case in 2012 and 2013 because he essentially was living with the family even though he and petitioner are divorced, and thus petitioner was overpaid FS because his income was not budgeted for FS purposes.

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 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 29th day of August, 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 August 29, 2013.

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