



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/150814

PRELIMINARY RECITALS

Pursuant to a petition filed July 17, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Northern IM Consortium to recover FoodShare benefits (FS), a hearing was held on September 19, 2013, by telephone. A hearing set for August 28, 2013 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner was overpaid FS because her son's father was not included in the FS household.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Beulah Garcia
Northern IM Consortium
10610 Main St., Suite 224
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. Petitioner originally applied for FS and BadgerCare Plus in June, 2011, when she was pregnant. She reported on the application that she was the only household member. The baby was added to the case in January, 2012.

3. Reviews were done in April and November, 2012, with petitioner reporting only herself and the child in the household. In May, 2013, petitioner reported that the child's father was living in the household, and had been living with her since the baby was born.
4. The agency obtained the father's income information. It determined that petitioner was overpaid a total of \$4,070 in FS from February, 2012 through April, 2013. It notified petitioner of the overpayment by two notices dated June 28, 2013, claim nos. [REDACTED] and [REDACTED].
5. When petitioner originally applied she mentioned that she had a roommate but did not make clear that it was the father's child.

DISCUSSION

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 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).

Petitioner does not dispute the calculations or that the father lived with her. She did testify that he is not there regularly because he works out of town. However, that issue was decided long ago (it arose usually in the case of over-the-road truck drivers). If the person's main residence is the home where his child

lives, and he returns to the home when he comes back from his job, that home is his residence, and he must be included in the household.

Petitioner testified that when she applied she told the worker that she had a roommate who often was not there, and the case notes of the meeting confirm that a roommate was mentioned. I cannot conclude from petitioner's testimony or the case note that petitioner said that the oft absent roommate was the father of the child. Had that been mentioned it would have triggered a whole set of questions that were not asked. More importantly, the worker asked if petitioner and the roommate purchased and prepared meals together, which is not a question that a worker would ask if she was told that the roommate was the father of petitioner's child. It is beyond credibility that the worker would fail to mention in the case notes that the person living with petitioner was the child's father if petitioner stated as such.

Furthermore, the original application, filed on May 26, 2011, before petitioner ever spoke to a worker, named petitioner as the only person in the household. The father is listed as an "absent parent." Based on the application the worker probably never suspected that petitioner's roommate was the baby's father.

For FS purposes the question of whether petitioner reported the father in the home is irrelevant. An FS overpayment must be recovered even if the error was made by the agency.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overpaid FS from February, 2012 through April, 2013 because she failed to report that the father of her child was living 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 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 25th day of September, 2013

\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 September 25, 2013.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability