



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/151901

PRELIMINARY RECITALS

Pursuant to a petition filed September 04, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Wood County Human Services - WI Rapids in regard to FoodShare benefits (FS), a hearing was held on October 24, 2013, at Ashland, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare that occurred because he incorrectly reported that his child was part of his household.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Beulah Garcia

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Ashland County.

2. The petitioner received FoodShare from August 1, 2012, through July 31, 2013. During this time his child was included in his household because he reported that she lived with him at least half of the time.
3. The petitioner's daughter lived with him less than half of the time from August 1, 2012, through July 31, 2013.
4. The county agency seeks to recover \$2,004 in FoodShare provided to the petitioner from August 1, 2012, through July 31, 2013.

DISCUSSION

Federal rules require state agencies to "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. The county agency contends that the petitioner received \$2,004 more FoodShare than he was entitled to from August 1, 2012, through July 31, 2013, because he incorrectly claimed that his child lived with him at least half of the time and was thus part of his FoodShare household. The petitioner does not challenge the agency's calculations.

The petitioner and his child's mother share custody. Although there was a court order concerning placement, both testified at the hearing that it was not followed. One cannot be considered part of more than one household in the same month. 7 CFR § 273.3(a). The federal rules provide no clear answer to what happens when a child lives with both parents. The rules do allow state agencies to create a policy where federal rules do not clearly address which parent's household the child is considered a part of, provided "the policy is applied fairly, equitably and consistently throughout the State." 7 C.F.R. § 273.1(c).

Wisconsin's policy, which is found in the *FoodShare Wisconsin Handbook*, § 3.2.1.1, provides the following guidance in these situations:

Children are included in the household where they reside when they are under the care and control of a parent or other caretaker in that household. There may be situations when the residence of a child is not easily determined. There are many methods that can be used to determine the child's residence. If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit.

In this case, it is unclear exactly how much time the child spent with the petitioner. He had the child every Tuesday and Thursday night, sporadically on weekends, and when the child's mother was out of town on business. The testimony was vague concerning how many weekends the child spent with the petitioner or how often the child's mother traveled for business, but there is little doubt that the child was with the petitioner less than half of the time. Based upon this, I find that the agency has established by the preponderance of the credible evidence that petitioner overstated the amount of persons in his household and that as a result he received an overpayment of FoodShare that he must now repay.

CONCLUSIONS OF LAW

The petitioner must repay an overpayment of FoodShare that occurred because he incorrectly reported that his daughter lived with him.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 30th day of October, 2013

\sMichael D. O'Brien
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 October 30, 2013.

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