



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/152969

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 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 December 5, 2013, by telephone.

The issue for determination is whether petitioner resided out of the state in early 2013.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Beulah Garcia
Northern IM Consortium
10610 Main Street
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 Vilas County.
2. Petitioner and her husband received FS in 2012 and 2013 as residents of Vilas County. Her husband was the primary person, and he completed a six-month review in December, 2012 showing no change in residence.
3. In fact petitioner's husband had been residing in Florida since approximately August, 2012. Petitioner joined him there in November although she kept her Vilas County residence as well. She remained in Florida until late June, 2013.

4. By a notice dated October 18, 2013, the agency informed petitioner that she was overpaid \$3,303 in FS from October 1, 2012 through June 30, 2013, because she did not report a change of residency to Florida, claim no. [REDACTED]. After petitioner appealed the agency changed the claim to \$2,022 for the period January 1 through June 30, 2013 because petitioner did not move to Florida until late November, 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).

7 C.F.R. §273.3(a) mandates residency requirements for FS:

A household shall live in the State in which it files an application for participation... The State agency shall not impose any durational residency requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents.

Petitioner testified that her husband's family owns a vacation home in Florida. Her husband went there in August, 2012 to look for a job after he was laid off in Wisconsin. Petitioner joined him in late November for the winter, but she never intended that the move be permanent. She kept the residence in Wisconsin and moved back there in late June. No FS application was filed in Florida.

A review of the Department's FS Handbook, Appendices 3.2.1 and 1.2.3.5, reveals no assistance to the question raised in this case. There is a reference at App. 3.2.1.2 to a person being temporarily absent from an ongoing FS household if the absence is less than two months, but that section does not refer to state residency.

It is evident from reading all of §273.3 that a major concern in the federal rule is to make certain that a person receive FS only once per month in one area. Petitioner and her husband did not receive any FS other than the FS issued in Wisconsin. Had they closed the Wisconsin FS and applied in Florida, they would have received the same FS they received in Wisconsin, as seen at the following website: <http://www.dcf.state.fl.us/newsroom/docs/quickfacts.pdf>.

I conclude that petitioner was not overpaid FS. Her move to Florida was not intended to be permanent, and in fact she returned to Wisconsin in June, 2013. She did not receive more FS than she would have received had she closed her Wisconsin FS and applied for FS in Florida. That said, it is evident that petitioner's husband is in Florida now full time, and thus petitioner correctly applied for just a one-person household when she returned in the summer, 2013.

I note that this decision applies only to the residency issue. If petitioner or her husband had income in Florida that was not reported to the Wisconsin agency, that could be a separate basis for an overpayment.

CONCLUSIONS OF LAW

Petitioner was not overpaid FS in 2013 because although she was physically in Florida she remained a Wisconsin resident and she did not apply for FS in Florida.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to rescind overpayment claim no. [REDACTED] and to cease recovery of it. The agency shall do so 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, Room 651, 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 9th day of December, 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 December 9, 2013.

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