



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/155026

PRELIMINARY RECITALS

Pursuant to a petition filed January 22, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Brown County Human Services [“County”] in regard to FoodShare benefits [“FS”], a Hearing was held via telephone on March 20, 2014. At petitioner’s request a Hearing scheduled for February 17, 2014 was rescheduled.

The issue for determination is whether it was correct to establish the following Claim against petitioner for an overpayment of FS: Claim Number [REDACTED] for the time period July 1, 2013 to August 31, 2013 in the total amount of \$735.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Chelsey Groessl, ES Supervisor
Emily Schabow, Case Worker
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. The Count established the following Claim against petitioner for an overpayment of FS: Claim Number [REDACTED] for the time period July 1, 2013 to August 31, 2013 in the total amount of \$735.00.
3. Petitioner and the mother of his children ["mother"] lived together in the same house during the time period of the overpayment (the house was not a duplex).
4. The FS overpayment in *Findings of Fact #2*, above, resulted from the fact that the mother had income which made petitioner ineligible for the FS in question; petitioner does not deny this.
5. Petitioner reported to the County that the mother of his children had moved back in to live with him; he did not report to the County that she had Unemployment Compensation ["UC"] income from the State of Nebraska.

DISCUSSION

The FS program has eligibility criteria based on both gross and net¹ incomes. see, 7 C.F.R. § 273.9(a) (2011); *FoodShare Wisconsin Handbook* ["FWH"] 1.1.4 & 4.3.1. For purposes of FS eligibility the income of all members of an FS household is counted. 7 C.F.R. §§ 273.9(a)intro. & (b)intro. (2011); *FoodShare Wisconsin Handbook* ["FWH"] 4.3.1.

Petitioner's FS household income exceeded the income limit during the time period in question.² Petitioner does not dispute this. Therefore, petitioner is liable for the FS overpayment detailed in *Findings of Fact #2*, above, and may be made to repay it.³

Petitioner argues that the mother of children was not part of his FS household. Petitioner argues that, although they lived in the same house, he lived upstairs and she lived downstairs (the house was not a duplex).

The basic definition of a *household* for purposes of FS is 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)(3) (2011); FWH 3.3.1.⁴

¹ Certain specified deductions from gross income are allowed when calculating net income for FS purposes. The only allowed deductions are: standard deduction; earned income deduction; excess medical deduction; dependent care deduction; child support deduction; homeless shelter deduction; excess shelter deduction; and, standard utility allowance. No other deductions are allowed. 7 C.F.R. § 273.9(d) (2011); FWH 4.6.1.,et. seq.; See also, FWH 8.1.1.2.

² When income is received weekly it is multiplied by 4.3 to get monthly income. 7 C.F.R. § 273.9(c)(2)(i) (2011). This is because there are, on average, 4.3 weeks in a month (52 weeks per year divided by 12 months per year).

³ The law provides that each person who was an adult member of the FS Household when the overpayment occurred is responsible for paying the claim. 7 C.F.R. § 273.18(a)(4)(i) (2011); *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.2. Further, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault. All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2011); FWH 7.3.1.1 & 7.3.1.2.

Petitioner acknowledges that he lived in the same house as his children and their mother. Therefore for purposes of FS, it must be concluded that he lived together with his children and their mother. This means that the County was correct to count the mother's UC as income for petitioner's FS household.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is liable for the FS overpayment detailed in *Findings of Fact* #2, above, and may be made to repay it.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

⁴ A person under 22 years of age who is living with his or her natural, or adoptive, or step parent must be considered as customarily purchasing food and preparing meals together with his or her parent, even if they do not do so, and thus must be included in the same FS household. 7 C.F.R. § 273.1(b)(1)(ii) (2011); FWH 3.3.1.3.2. Likewise, 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 must be considered as customarily purchasing food and preparing meals together with that person, even if they do not do so, and thus must be included in the same FS household. 7 C.F.R. § 273.1(b)(1)(iii) (2011); FWH 3.3.1.3.3. Additionally, spouses must be considered as customarily purchasing food and preparing meals together, even if they do not do so, and thus must be included in the same FS household if they live together. 7 C.F.R. § 273.1(b)(1)(i) (2011); FWH 3.3.1.3.1.

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 8th day of April, 2014

\sSean P. Maloney
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 April 8, 2014.

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