



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/155027

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 22, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Forest County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on February 26, 2014, by telephone.

The issue for determination is whether petitioner properly had her son on her FS case.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Mary Hietpas  
Forest County Dept. of Social Services  
200 E. Madison Street  
Crandon, WI 54520

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Forest County.
2. Petitioner has received FS for herself and two sons since at least 2011. Until July, 2011 petitioner lived with her mother, C.V., but has lived on her own since then.
3. In October, 2013, petitioner and C.V. met with a county social worker to ask if C.V. could become guardian of petitioner's younger son, E.D. During the meeting they mentioned that C.V. has had control of E.D. since birth, and when asked how often E.D. stayed with petitioner "in the past year," petitioner answered about once per month.

4. The county thereafter did an overpayment claim, seeking recovery from petitioner for E.D.'s share of FS back to March, 2011. By notices dated December 19, 2013, the county informed petitioner that she was overpaid a total of \$4,747 in FS from March, 2011 through September, 2013, claim nos. [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. I note that claim no. [REDACTED] originally was higher but was adjusted down to \$1,384 for unknown reasons.
5. E.D. moved in permanently with C.V. in March, 2013. C.V. did not file for FS for petitioner's son at any time during the overpayment period.

### 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).

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).

The issue is where E.D. was living during the period March, 2011 through September, 2013. There is very little evidence on either side. The only evidence presented by the county was a written case note provided by the social worker with whom petitioner and C.V. spoke in October 2013. It says two things of import. First, it says that E.D. "basically has lived" with C.V. since birth. Secondly it says that petitioner responded to a question of how often E.D. has stayed with her in the past year "less than 12 times." The social worker recorded the conversation, but the recording was not available at the hearing.

Petitioner testified that she had E.D. until her boyfriend moved in with her in the spring, 2013. Because her boyfriend and E.D. had problems in the past they decided to have E.D. stay with C.V. full time then. Petitioner's boyfriend moved in in March, 2013.

I have puzzled over the result of this case for substantial time, and in the end I conclude that the only period in which an overpayment definitely occurred is the period petitioner admits, beginning in April, 2013. If E.D. stayed with C.V. after the boyfriend moved in, the next month of benefits would be April, 2013, and thus that is the month the overpayment would begin.

There are too many variables at play to go back further. What petitioner and C.V. meant when they reported that E.B. “basically” lived with C.V. is not quantified, and it is difficult to determine petitioner’s thought process when asked about E.D.’s living situation “in the past year.” Clearly, based on petitioner’s sworn testimony, she was thinking about some amorphous time in the past, not specifically and precisely twelve months to the day the question was asked. In addition this decision involves a closely knit family with regular contact and movement between the members. It would have been helpful to have testimony from C.V., the social worker, or others aware of the situation, but all I have is the one case note. I cannot find, based on the evidence before me, that E.D. was or was not “living” outside of petitioner’s home before the date that petitioner admits he did so.

### **CONCLUSIONS OF LAW**

Petitioner was overpaid FS for her son because he moved out of her home without her reporting the move, but the move occurred in March, 2013, not in 2011 as alleged by the county.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to rescind any portion of the FS overpayments claimed against petitioner for the period March, 2011 through March, 2013, and to amend the claim to include only the months of April, 2013 through September, 2013. Any amounts recovered for the earlier dates should be applied to the remaining overpayment for the period beginning April, 2013. The county shall take this action, and shall inform petitioner of the amended claim amount, 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 11th day of March, 2014

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 11, 2014.

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