



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/155080

PRELIMINARY RECITALS

Pursuant to a petition filed January 28, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Sawyer County Human Services in regard to FoodShare benefits (FS), a hearing was held on March 20, 2014, at [REDACTED], Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] [REDACTED] (did not appear)
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Beth Ann Richlen
300 Third Street, Suite 210
P. O. Box 6100
Wausau, WI 54402-6100

Respondent:

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

By: Beulah Garcia

Sawyer County Human Services
10610 Main Street
PO Box 730
[REDACTED], WI 54843

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The county agency seeks to recover \$3,912 in FoodShare paid to the petitioner from April 1, 2010, through October 31, 2010, and January 1, 2013, through October 31, 2013.
3. ██████ lived in ██████, Wisconsin away from the petitioner from November 2010 through October 31, 2012. He and the petitioner lived together at all other times from April 1, 2010, through October 31, 2013.
4. The petitioner and ██████ have owned a house and property together since before April 1, 2010.
5. ██████ has worked at the ██████ ██████ in Sawyer County since September 29, 2009.

DISCUSSION

Federal regulations 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 amount of a FoodShare allotment depends upon net income and the number of persons in the household. The county agency contends that the petitioner received \$12,124 more FoodShare than she was entitled to from April 1, 2010, through October 31, 2013, because she failed to report that her long-time boyfriend, ██████, lived with her. She does not challenge the agency’s calculations but rather contends that he did not live with her during this period.

██████ and the petitioner have two adult children together and have received public assistance as part of the same household on and off since the 1990s. Public assistance records indicate that they all moved from Milwaukee to Sawyer County together in 1999, they all moved back to Milwaukee the following September, and they all returned to Sawyer County in April 2001. ██████ moved to South Carolina in March 2006, and they followed him a few months later. But when the petitioner returned to Wisconsin and requested benefits in Sawyer County in July 2008, she did not include him in her household. She has received benefits since then without his being part of the household. When the petitioner renewed her benefits on September 20, 2013, the worker asked how she was paying her shelter expenses. Her hesitation in responding made the worker suspicious. The agency sent an investigator to the petitioner’s house to interview her on September 26, 2013. She answered the door, and Felencio was in the house. She claimed he did not live there but could not provide an alternate address, saying that he spent time in Milwaukee and South Carolina, but that he stayed with her “sometimes.” Her assertion that he stayed in Milwaukee and South Carolina was controverted by a state wage match showing that he has been working fulltime at the ██████ ██████ in Sawyer County since September 29, 2009.

There is evidence that the ██████ did not live with the petitioner continuously since September 29, 2009. He signed a statement indicating that he lived at another location near ██████ from November 2010 through October 2012. Although he continued to receive his mail at the petitioner’s residence, he did have a lease at the other place. The agency concedes that he did not live with her during this period and reduced the alleged overpayment from the original \$12,124 to \$3,912. One could certainly have reasonable doubts given the evidence whether he lived with her the rest of the time: No one with first-hand knowledge of the situation other than the investigator testified, and his knowledge was limited to seeing ██████ on the premises on one date and a vague, apparently misleading statement from the petitioner.

But the agency’s burden of proof is not beyond a reasonable doubt; rather it is by the preponderance of the credible evidence, a fairly low standard that requires only that it show that it is more likely than not that ██████ lived with the petitioner. Much of its case is circumstantial. The petitioner and ██████ had children together and had a long history of living together. They both owned the petitioner’s residence. Other than from November 2010 through October 2012, there is no evidence that ██████ lived anywhere else. This evidence is reinforced by the petitioner’s failure to appear at the hearing. (She was represented by an attorney who did appear.) The agency must still prove that an overpayment occurred,

but, because this is a civil rather than a criminal case, her failure to appear can be considered an admission that she could not defend herself against the allegations. I am aware that people forget about hearings, but the petitioner had an attorney to remind her of the date and the consequences of failing to appear. Her failure to appear, the circumstantial evidence, and her evasive answers to the investigator and her worker are sufficient to prove by the preponderance of the credible evidence that [REDACTED] did live with her. As a result, the agency's decision to find that a \$3,912 overpayment occurred is upheld.

I note that although I am upholding the agency, I am remanding this matter to ensure that the amount of the overpayment has been reduced to \$3,912.

CONCLUSIONS OF LAW

The county agency correctly determined that the petitioner received an overpayment of FoodShare because she failed to report that the father of her children lived with her.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take all steps necessary to ensure that the petitioner's overpayment of FoodShare occurring from April 1, 2010, through October 31, 2013, is reduced from \$12,124 to \$3,912. In all other respects, the petitioner's appeal is 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).

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 1st day of April, 2014

\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 April 1, 2014.

Sawyer County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney Beth Ann Richlen