



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/155677

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 22, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on April 03, 2014.

The issue for determination is whether the agency correctly determined that petitioner was liable for an overpayment of FS.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Bonnie Laub

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Waukesha County.
2. On August 30, 2013 petitioner's husband signed an application for FS requesting FS for a household of 8 persons: himself, petitioner, their adult daughter, and their 5 minor children.

3. Petitioner's 5 minor children were not residing with her at the time of application, had not been since May 7, 2013, when they were placed with their grandmother via a court order, and were not living with her through November 2013.
4. Petitioner's household received FS for a household of 8 from September – November 2013.
5. On January 3, 2014 the agency issued a notice of decision to petitioner stating that she was liable for an FS overpayment (claim # [REDACTED]) in the amount of \$2404 due to client error in not reporting accurate household members.

### DISCUSSION

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). 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(a)(2). In this case, the agency found an overpayment against petitioner due to client error in not reporting accurate household members.

In determining the amount of FS to allot each household, the agency must look at the household composition as it affects eligibility. See *FS Handbook*, §3.3.1, available online at <http://www.emhandbooks.wi.gov/fsh/>. The amount of persons residing in the household obviously impacts the amount of FS issued. See *FS Handbook*, §8.1.2. Petitioner did not disagree that the 5 minor children did not reside in their home during the three months sought for the overpayment. However, her husband testified that he was of the belief that they would return to the home and that the FS received was used to purchase food for the children when they resided with their grandmother. I can find no exception to the residency/household composition policy that petitioner seeks. The only exception for residency is the "temporary absence" policy, but the absence can be no longer than 2 full consecutive calendar months. See *FS Handbook*, §3.2.1.2. By the time petitioner's husband applied in August, the children were already out of the home for 3 months. The policy for determining residence when children are involved also provides this example:

**Example 2:** Fran (mom) has legal custody of Clarence. However, Clarence resides with grandma, and occasionally visits mom. Clarence is considered "residing" with grandma and would be included in Grandma's food unit if she applied. Clarence would not be included in Mom's food unit since he is residing with Grandma.

See *FS Handbook*, §3.2.1.1.

I have reviewed the calculations. The county correctly determined the amount of the overpayment. Based on all of the above, I must find that the county has established its claim for overpayment. The petitioner can offset her overpayment with any current FS benefits, as opposed to making cash payments or having her taxes intercepted.

I also add that the federal FS regulations provide that all adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); *FS Handbook*, §7.3.1.2. 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). FS rules provide further as follows:

The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

- (i) Spouses;
- (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and
- (iii) 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.

7 C.F.R. §273.1(b)(1); see also *FS Handbook*, §3.3.1.3.

With regard to who is liable for the overpayment, the *FS Handbook*, §7.3.1.2 reads as follows:

All adult or emancipated minor food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

Here, petitioner was considered a part of the food unit as she lived with her husband. See 7 C.F.R. §273.1(b)(ii) and *FS Handbook*, §3.3.1.3 (#1). As confirmed by the federal regulations above and as interpreted for the *FS Handbook*, if petitioner was an adult member of the FS household at the time the overpayment occurred, she is also held liable for that overpayment. While that may seem extremely unfair, state administrative law judges do not have the authority to bypass the federal rules for reasons of fairness. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

**CONCLUSIONS OF LAW**

The agency correctly determined that petitioner was liable for an overpayment of FS (claim # [REDACTED]).

**THEREFORE, it is ORDERED**

That the petition for review herein be and the same is hereby 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, 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 Milwaukee,  
Wisconsin, this 30th day of April, 2014

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\sKelly Cochrane  
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 30, 2014.

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