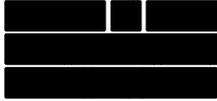




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/155938

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 10, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on April 07, 2014, at Janesville, Wisconsin.

The issue for determination is whether petitioner was overpaid \$303 in FS from October 1, 2013 through November 30, 2013, because she did not report a change of residency to Florida.

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: Mary Donahue

Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Rock County.
2. Petitioner received FS in October and November of 2013 as a resident of Rock County.

3. Petitioner temporarily resided in Florida from September, 2013, through December 10, 2013, although she kept her leased Rock County residence. She temporarily resided in Florida to care for her ill brother.
4. By a notice dated January 7, 2014, the agency informed petitioner that she was overpaid \$303 in FS from October 1, 2013 through November 30, 2013, because she did not report a change of residency to Florida, claim no. [REDACTED].

### 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, § 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 brother was suffering from cancer, and requested that she assist him while he received treatment for the disease. Petitioner joined him in September, 2013, but she never intended that the move be permanent. She kept her residence in Wisconsin and moved back there in December, 2013. No FS application was filed in Florida.

A review of the Department's FS Handbook, §§ 3.2.1 and 1.2.3.5, reveals no assistance in addressing the issue raised in this case. There is a reference at § 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 7 C.F.R. §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 did not receive any FS other than the FS issued in Wisconsin. Had she closed the Wisconsin FS and applied in Florida, she would have received the same FS that she received in Wisconsin, as noted 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 three months after departing to care for her ill brother. She did not receive more FS than she would have received had she closed her Wisconsin FS and applied for FS in Florida.

**CONCLUSIONS OF LAW**

Petitioner was not overpaid FS in 2013 because although she was physically in Florida for 3 months 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**

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 23rd day of May, 2014.

---

\sPeter McCombs  
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 May 23, 2014.

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