



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/156614

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 7, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Dane County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on May 22, 2014, by telephone. A hearing set for May 14, 2014 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner was overpaid FS when she was living with her parents.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Michelle Furr, Monica Johnson  
Dane County Dept. of Human Services  
1819 Aberg Avenue  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner applied for FS on February 10, 2012. She included only herself and her daughter in the household, and FS were granted for a two-person household. Petitioner reported no changes in subsequent reviews.
3. In December, 2013 petitioner reported that she has lived with her parents for her entire life and that they share meals. The county eventually obtained information concerning income for the

entire household and determined that petitioner would not have been eligible for FS throughout the period she received the benefits.

4. By notices dated March 13, 2014, the county informed petitioner that she was overpaid a total of \$4,666 in FS from February, 2012 through January, 2014, claim nos. [REDACTED] and [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, 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). 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, Appendix 3.3.1.2.

Under the federal FS law petitioner should have reported and been included in a group with her parents (she was under age 22 when she applied in 2012). Had she done so she would have been ineligible for FS due to her parents' income. Thus the county overpayment determination was correct.

Petitioner testified that she was told to apply for just herself and her daughter by a Women, Infants, and Children (WIC) program worker. She also testified that she told her FS worker about her situation. It is possible that a WIC representative could have made the mistake because she would not necessarily be

versed in FS rules. It is less likely that an FS worker would make such an obvious error if told by an applicant, but it is possible. Nevertheless, the FS rules require recovery of overpayments even if they were caused by agency error. In this case the calculation would be the same whether client or agency error. I thus must conclude that the county's claim was made correctly.

### **CONCLUSIONS OF LAW**

The county correctly seeks recovery of an FS overpayment resulting from the failure to include all necessary household members on an FS application.

**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).

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 29th day of May, 2014

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\sBrian C. Schneider  
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 May 29, 2014.

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