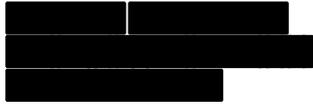




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

FOP/156664

PRELIMINARY RECITALS

Pursuant to a petition filed April 4, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Green Lake County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on September 3, 2014. At petitioner's request Hearings scheduled for August 4, 2014, June 17, 2014, and May 8, 2014 were rescheduled. The Hearing for this matter was held at the same time for the Hearings for the following 2 closely related matters concerning the same petitioner: FOO-156662; and, CTS-156663.

The issue for determination is whether it was correct to establish the following 3 Claims against petitioner for overpayments of FS in the total amount of \$4,659.00 for the time period January 1, 2013 to March 31, 2014:

- Claim Number [redacted]; January 1, 2013 to April 30, 2013; \$1,264.00;
Claim Number [redacted]; May 3, 2013 to September 30, 2013; \$1,596.00; and,
Claim Number [redacted]; October 8, 2013 to March 31, 2014; \$1,799.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Shelby Jensen, ES Unit Manager
Green Lake County Department of Human Services
Human Services Ctr
571 County Road A
Green Lake, WI 54941

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Green Lake County, Wisconsin.
2. The County established the following 3 Claims against petitioner for overpayments of FS in the total amount of \$4,659.00 for the time period January 1, 2013 to March 31, 2014:
 Claim Number [REDACTED]; January 1, 2013 to April 30, 2013; \$1,264.00;
 Claim Number [REDACTED]; May 3, 2013 to September 30, 2013; \$1,596.00; and,
 Claim Number [REDACTED]; October 8, 2013 to March 31, 2014; \$1,799.00.
3. Petitioner has 2 minor sons (AGJ & ASJ).
4. By a Circuit Court Order dated October 2, 2006 it was ordered that AGJ's father have sole physical placement of AGJ. *Order*, Case No. [REDACTED] (Wis. Cir. Ct. Green Lake County October 2, 2006).
5. By a Circuit Court Order dated October 2, 2006 it was ordered that ASJ's father have sole physical placement of ASJ. *Order*, Case No. [REDACTED] (Wis. Cir. Ct. Green Lake County October 2, 2006).
6. A document filed in Green Lake County Circuit Court on December 17, 2012 pursuant to a Circuit Court Order, signed by both petitioner and the father of her sons, shows that petitioner has visitation with her sons on certain days (1 or 2 days per week) but that her sons do not live with her.
7. During the time period of the overpayments in this matter petitioner's 2 sons lived with their father, not with petitioner (although petitioner did visit with her sons and have some periods of placement).
8. The FS overpayment in *Findings of Fact* #2, above, resulted from the fact that FS was issued to petitioner for her 2 sons when it should not have been because her 2 sons did not live with her.

DISCUSSION

The law provides that each person who was an adult member of the FS Household when the overpayment occurred is responsible for paying the claim. 7 C.F.R. § 273.18(a)(4)(i) (2011); *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.2. All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2011); FWH 7.3.1.1 & 7.3.1.2.

In order for a person to get FS for a child the child must be in that person's FS household. FWH 8.1.2.

The basic definition of a *household* for purposes of FS is 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)(3) (2011); FWH 3.3.1. The issue here is whether or not petitioner's sons "live with" petitioner for FS purposes.

In cases of parents who do not live together state policy concerning who children "live with" for purposes of FS is as follows:

"Children are included in the household where they reside when they are under the care and control of a parent or other caretaker in that household. There may be situations when the residence of a child is not easily determined. There are many methods that can be used to determine the child's residence. If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit.

"If the parents can not or will not decide, compare the parents' activities and responsibilities against the following list and determine which one is exercising more control than the other:

1. If the parents reside in different school districts, where does the child attend school? Who selected the school?
2. Who assists the child with homework or school-related tasks?
3. Are there tuition costs for the child's education? If so, who pays those costs?
4. If the child is enrolled in day care, who arranges for and pays these costs?
5. Who is responsible for taking the child to and from school and/or day care?
6. Which parent is listed as the contact for emergencies at the child's school or day care provider?
7. Who arranges medical and dental care for the child? Who selects the physician and dentist?
8. Who maintains the child's medical records?
9. Who initiates decisions regarding the child's future?
10. Who responds to medical or law enforcement emergencies involving the child?
11. Who spends money on food or clothing for the child when the child visits the absent parent?
12. Who disciplines the child?
13. Who plays with the child and arranges for entertainment?
14. Are more of the child's toys, clothing, etc. kept at one parent's home than the other's?

Only one parent can receive FS for a child. If it still can not be determined which food unit the child should be in, the caretaker that first applies would be eligible."

FWH 3.2.1.1.

In this case, it is not necessary to consider the above 14 factors. This is because, although petitioner did have some visitation with her sons, her sons did not live with her during the time period of the overpayments. This is based on the court documents, one of which is signed by both petitioner and the father of her sons, detailed in the above *Findings of Fact*.

Petitioner testified that she has her sons "a lot", that she attends middle school orientation, science fairs, baseball, and that she buys school supplies. She testified that she has her sons 17 days out of the month and that they live with her ½ the time. First, this is not credible in light of the court documents that are part of the record of this matter. Petitioner offered no explanation for the inconsistency between her testimony and the court documents, even when asked. Second, petitioner's testimony appeared to address only the present, and not the entire time period of the overpayments.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to establish the 3 Claims detailed in *Findings of Fact #2*, above, against petitioner for overpayments of FS in the total amount of \$4,659.00 for the time period January 1, 2013 to March 31, 2014.

NOW, 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 5th day of September, 2014

\sSean P. Maloney
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 September 5, 2014.

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