



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/157354

PRELIMINARY RECITALS

Pursuant to a petition filed May 01, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Rusk County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on June 12, 2014, at Ladysmith, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Beulah Garcia

Rusk County Department of Social Services
Courthouse
311 Miner Avenue East, Suite C240
Ladysmith, WI 54848

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Rusk County.
2. The county agency alleges that the petitioner received \$7,446 in FoodShare that she was not entitled to from January 1, 2011, through February 28, 2014, because she falsely reported that her husband does not live with her.

3. The petitioner's husband, [REDACTED], had been part of her FoodShare case until she reported that he moved out of the house late in 2010.
4. [REDACTED] has several vehicles registered with the Wisconsin Department of Motor Vehicles. Each lists his address as the same as the petitioner's.
5. Court records for [REDACTED] and the petitioner have the same address for both.
6. [REDACTED]'s driver's license lists the same address as the petitioner's.
7. [REDACTED] and the petitioner have co-owned the house the petitioner lives in since 2011. It was owned by another person with his last name before then.
8. The petitioner applied for medical assistance based upon a disability in December 2012. She listed [REDACTED] as her authorized representative. They both listed the same address.
9. The petitioner and [REDACTED] have been married for 28 years. They recently filed an action for a legal separation.

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 \$7,446 more in FoodShare than she was entitled to from January 1, 2011, through February 28, 2014, because she falsely reported that her husband, [REDACTED], had moved out of the house late in 2010. She does not challenge the agency's calculations but rather contends that he did not live with her during this period.

The county agency submitted a good deal of documentation, including court records, vehicle registrations, mailing addresses, public benefits applications, and a property title showing that they lived at the same address. The petitioner does not deny that this documentation exists. Rather, she and [REDACTED] both contend that he actually stays in a nearby house and continues to use her address out of convenience. [REDACTED] pointed out that he travels for carpentry jobs and needs someone to open his mail. In addition, a review of this documentation provides a good reason for the petitioner to wish to live in some house other than one she shares with [REDACTED]: From 2004 until the hearing, she filed for a domestic abuse restraining order against him twice and he filed for an order against her once. In addition, CCAP, the Wisconsin circuit court online database, indicates that on June 17, 2014, five days after the hearing, he became the respondent in another domestic abuse case; this one did not list the respondent.

Although the petitioner's explanation is at least somewhat plausible, this is a civil matter in which the agency needs only to prove that the overpayment occurred by a preponderance of the credible evidence. This is a fairly low standard that requires the Department to show only that it is more likely than not that the overpayment occurred. Not only does all of the documentation support the county agency, but the petitioner's claim that [REDACTED] moved out in 2010 and remained out through February 2014 is implausible in light of a couple of facts. In 2011, she and [REDACTED] became co-owners of the house she lived in. It makes little sense for him to buy a house with her if they were not living together. Then, in December 2012 she applied for medical assistance based upon a disability. In that application she listed [REDACTED] as her authorized representative and indicated that they lived at the same address. These facts and the agency's documentation establish by the preponderance of the evidence that the petitioner and [REDACTED] lived together during the period in question. As a result, she received FoodShare benefits that she was not entitled to and must now repay.

CONCLUSIONS OF LAW

The county agency correctly seeks to recover \$7,446 in FoodShare that the petitioner received from January 1, 2011, through February 28, 2014, because she falsely reported that her husband was not in the household.

THEREFORE, it is

ORDERED

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 24th day of June, 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 June 24, 2014.

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