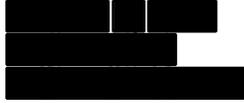




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158341

PRELIMINARY RECITALS

Pursuant to a petition filed June 16, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Vernon County Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on July 14, 2014.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Tom Miller

Vernon County Human Services
318 Fairlane Drive, Suite 100
Viroqua, WI 54665-6131

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Vernon County.
2. The county agency seeks to recover \$260.00 in FoodShare paid to the petitioner in October, 2013 (Claim no. [redacted]).
3. Petitioner's FS household includes her daughter and her daughter's father, GA.

4. Petitioner applied for FS benefits in October, 2013; the application was approved by the respondent for expedited benefits for a household of two, petitioner and her daughter.
5. On October 28, 2013, respondent conducted a FS interview with petitioner, wherein petitioner informed respondent that GA was living with petitioner and their daughter. Petitioner provided GA's paystubs and a lease for [REDACTED], which identified GA as the tenant.
6. On November 6, 2013, the respondent denied petitioner's FS application due to income in excess of program limits. On November 7, 2013, the petitioner called the respondent to report that GA was not residing in her home, and FS was subsequently approved.
7. In October, 2013, the petitioner and GA resided at [REDACTED].

### **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 \$206.00 more FoodShare than she was entitled to in October, 2013, because she failed to report that the father of her daughter, GA, lived with her. She does not challenge the agency's calculations but rather contends that he did not live with her during this period.

The petitioner presented uncorroborated testimony that the GA has not lived with the petitioner continuously since she moved to Wisconsin in July of 2013. Petitioner stated that GA stays with other family members, but does spend time at her residence to see their daughter. GA continues to receive some of his mail at the petitioner's residence, and he keeps two vehicles at the property.

The agency's burden of proof is not beyond a reasonable doubt; rather it is by the preponderance of the credible evidence, a fairly low standard that requires only that it show that it is more likely than not that GA lived with the petitioner. Much of its case is circumstantial. The petitioner and GA have a child together and have a history of living together. GA is the named tenant on the lease for the petitioner's residence. Aside from petitioner's testimony the record contains no evidence that GA lived anywhere else in October of 2013. This conflicts with petitioner's own statement in her October, 2013 FS interview that GA did live with her. The respondent also presented testimony that GA indicated to respondent's investigator that he lived at petitioner's residence.

I conclude that the record establishes that petitioner and GA resided together in October, 2013. The documentation demonstrates that GA leased the residence and used the address for work purposes. I find it suspicious that petitioner indicated at her FS interview that GA lived with her, only to immediately report that he did not live with her following receipt of an FS denial notice. The petitioner has failed to establish that the respondent erred in finding that petitioner and GA resided together in October, 2013.

### **CONCLUSIONS OF LAW**

The county agency correctly determined that the petitioner received an overpayment of FoodShare because she failed to report that the father of her child lived with her.

**THEREFORE, it is**

**ORDERED**

That the petitioner's appeal 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 15th day of August, 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 August 15, 2014.

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