



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/158603

PRELIMINARY RECITALS

Pursuant to a petition filed June 24, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Eau Claire County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on July 14, 2014, at New Richmond, Wisconsin. The hearing was originally scheduled for a July 15, 2014.

The issue for determination is whether the petitioner must repay an 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: Aaron Borreson

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The Department seeks to recover \$2,452.02 in FoodShare benefits she received from November 1, 2008, through February 28, 2014.

3. The petitioner has been married to [REDACTED] since September 17, 2008. They have been living together since then.
4. In November 2008, the petitioner submitted a note, handwritten by [REDACTED], dated November 20, 2008, that stated that he and the petitioner were not married or purchasing and preparing food together.
5. [REDACTED] was working throughout the period in question. The petitioner does not challenge the agency's overpayment calculations.

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 FoodShare one receives depends upon the number of persons in the household and the total income of all of the household's members. *See* 7 CFR § 279(b). The county agency alleges that the petitioner received \$2,452.02 more in FoodShare benefits from November 1, 2008, through February 28, 2014, than she was entitled to because she failed to report that she had been married to [REDACTED] since September 17, 2008, and living with him since then. This caused his income to be left uncounted when determining her benefits.

If a single person lives with others but purchases and prepares food separately, she can be considered part of a separate household. 7 CFR § 273.1(a). Spouses are always considered part of the same household, even if they do not purchase and prepare food together. 7 CFR § 273.1(b)(1)(i). Although the petitioner and [REDACTED] had been recently married, she submitted to the agency a note dated November 20, 2008, in which [REDACTED] claimed that they were unmarried and purchased and prepared meals together. She eventually submitted her marriage certificate because she hoped to get medical assistance for [REDACTED]. She contends that the agency should reduce her overpayment because it did not end her benefits quickly enough after she submitted her marriage certificate.

The petitioner's claim lacks any merit because the agency must recover any claim regardless of who is at fault. In making this observation, I do not suggest that the agency was at fault in this matter. Rather, I point out that even if I would accept the petitioner's argument that this overpayment was not her fault despite committing blatant fraud that could have landed her in prison, the agency must still recover the entire overpayment. She does not challenge the calculations; I have reviewed them and found no errors. Therefore, she must repay the benefits she was not entitled to receive.

CONCLUSIONS OF LAW

The county agency correctly determined that the petitioner must repay an overpayment of FoodShare that occurred from November 1, 2008, through February 28, 2014.

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.

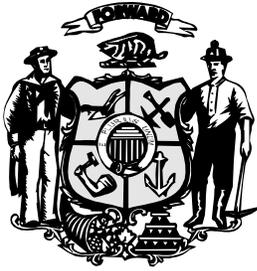
APPEAL TO COURT

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 31st day of July, 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 July 31, 2014.

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