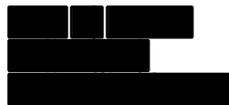




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158801

**PRELIMINARY RECITALS**

Pursuant to a petition filed July 05, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Wood County Human Services - WI Rapids in regard to FoodShare benefits (FS), a hearing was held on August 18, 2014, at Medford, 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:



Respondent:

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

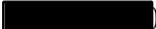
By: Beulah Garcia

Wood County Human Services - WI Rapids  
320 West Grand Avenue  
PO Box 8095  
Wisconsin Rapids, WI 54495-8095

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # ) is a resident of Taylor County.
2. The county agency notified the petitioner on June 9, 2014, that he received \$973 in FoodShare that he was not entitled to from March 7, 2014, through May 31, 2014, because he incorrectly

reported that he no longer lived with the mother of his child when he renewed his FoodShare benefits.

3. The petitioner has not lived with the mother of his child since before March 4, 2014.

### DISCUSSION

Federal rules 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. FoodShare eligibility depends upon the number of persons and total income of a household. A FoodShare household consists of all persons who purchase and prepare food together. If a single person lives with others but purchases and prepares food separately, he can be considered part of a separate household. 7 CFR § 273.1(a). Children under 22 years old who live with a parent are always considered part of that parent’s household. 7 CFR § 273.1(b)(1)ii. A person cannot be considered part of more than one FoodShare household in the same month. 7 CFR § 273.3(a). When a child under 22 lives with parents who live together, both of that child’s parents must be part of the same household because if they were not it would be impossible for the child to be included in the household of each parent but also be part of only one household, as the law requires.

The county agency contends that the petitioner received \$970 more in FoodShare than he was entitled to from March 7, 2014, through May 31, 2014, because he did not report that he continued to live with the mother of his child when he renewed his FoodShare benefits. The petitioner contends that he had moved out by then.

The agency might have had a solid case if it had called witnesses to present the primary evidence against the petitioner, but it did not. The agency contends that ██████, a woman who lived with the mother of the petitioner’s child, told its investigator that the petitioner lived there while she did. The investigator states that ██████ did not testify because he did not find out that the matter was being heard until three days before the hearing. Presumably, the mother of the petitioner’s child did not testify for the same reason. The rules of evidence generally do not apply to administrative hearings. Wis. Stat. § 227.45. Nevertheless, administrative decisions cannot be based solely upon uncorroborated hearsay. *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987).

The agency did present motor vehicle records showing that the petitioner co-owned a car with the mother of his child and the car was located at her address. It also presented evidence that she and the petitioner co-owned the house she lived in. Finally, it presented court records showing that the petitioner used her address as his. None of this evidence contradicts the petitioner’s position that he moved out of the house he shared with the mother of his child earlier this year. The only date on the motor vehicle form was June 10, 2013, the date it was registered. Similarly, the court case involved a traffic offense in July 2013. The petitioner and his child’s mother do apparently continue to co-own the house, but couples who split up often continue to own houses together for a while. The investigator testified that the petitioner continues to use the address in question as his but presented neither details of this use nor documentation of it.

The evidence against the petitioner consists of a paraphrased summary of someone who allegedly lived with the mother of the petitioner’s child and a few documents establishing that he had lived with her last year. Without some questions of ██████ pinpointing exactly when she lived with the petitioner, her statement has little probative value.

Although the agency presented little probative evidence, I am skeptical of the petitioner’s claim. He is a truck driver who is gone most of the time, leaving him without strong ties to any particular location. He contends that he now lives out of his truck, which when he is not on the road is parked on property across

the road from the property he admits he used to live on. FoodShare rules do not “require one to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility.” 7 CFR § 273.3(a). But when one parks within close walking distance of a house he owns and where his child lives, it seems unlikely that does not eat there, at least when he is eating the food that can be bought with FoodShare. His other evidence supporting his claim is stronger. He asserts that he contacted the county child support agency on March 4, 2014, to request that he begin paying child support. Child support records indicate that he did make this request, although they do not clearly state when he made it. This is not overwhelming evidence because if he remained in the household, he would have access to the money he paid in. Still, he made the contact before the FoodShare agency brought the current action—or even before the alleged overpayment began.

None of the evidence from either party is satisfactory. The agency has the burden of proving that an overpayment occurred. If it had presented a live witness available for questioning who testified at all credibly that the petitioner lived with the mother of his child after March 7, 2014, it would have met this burden. Although its investigator interviewed someone who might have testified to this, it did not call her. Thus, despite my doubts about the petitioner’s case, I must find that the agency has not met its burden of proof and cannot recover the alleged overpayment of FoodShare.

### CONCLUSIONS OF LAW

1. The county agency has not proven by the preponderance of the credible evidence that the petitioner was part of the same household as the mother of his child after March 7, 2014.
2. The county agency cannot recover the overpayment of FoodShare that it alleges occurred from March 7, 2014, through May 31, 2014.

**THEREFORE, it is**

### ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it end any attempts to recover the \$973 in FoodShare provided to the petitioner from March 7, 2014, through May 31, 2014.

### **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 27th day of August, 2014

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\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 August 27, 2014.

Wood County Human Services - WI Rapids  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability