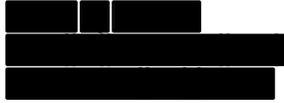




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158825

PRELIMINARY RECITALS

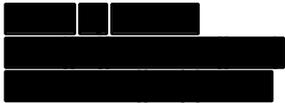
Pursuant to a petition filed July 07, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on July 31, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner is liable for an FS overpayment.

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: Pam Hazely

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner was an ongoing FS recipient since at least 2010. The petitioner lives with her boyfriend, JY, the father of her child.

3. Petitioner submitted an online Six Month Report Form (SMRF) on December 3, 2010, identifying her address on [REDACTED] Avenue in [REDACTED], Wisconsin, and indicating that only she and her daughter resided at that address. The same address and household information was submitted on SMRF's/renewals completed October, 2011, April, 2012, October 2012, and April, 2013.
4. On July 16, 2011, JY submitted a FS application claiming the same address as petitioner's address, and reporting only himself in the household. The same address and household information was submitted on SMRF's/renewals/applications completed December, 2011, June, 2012, and January, 2013.
5. JY reported residing at the [REDACTED] Avenue residence to Child Support, according to the online KIDS website.
6. Wisconsin Circuit Court Access website indicates that both petitioner and JY have reported the [REDACTED] Avenue residence.
7. The county agency notified the petitioner on June 27, 2014, that it had established an overpayment of FS benefits due to a failure to report accurate household members.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii). The petitioner has not contested the agencies math, but argues that JY was not residing with her, and was not a member of her household during the overpayment period of September 1, 2011, through May 31, 2014.

A FoodShare household consists of one or more persons who live in the same household and purchase and prepare food together for home consumption. 7 CFR § 273.1(a)(3); *FoodShare Wisconsin Handbook* § 3.3.1. Anyone under 22 years old who lives "with his or her natural or adoptive parent(s) or step-parent(s)" is considered part of that household whether or not the entire household eats and prepares food together. 7 CFR §273.1(b)(1)(ii). Because a parent who lives with a child is part of that child's household, if both parents live with a child they have in common, they are considered part of the same FoodShare household as each other.

JY testified at hearing that the respondent's findings regarding his use of the [REDACTED] Avenue address were correct. He argued, however, that while he used the address, prior to Christmas, 2013, he did not live there more than 8-10 days per month. Notably, he did not identify any other fixed address where he paid any rent or mortgage; he testified that he supposedly stayed with friends. This is not to say that he spent every night with the petitioner; I have no trouble believing that they had differences that lead to their spending some nights apart. But it has not been established that JY spent most of his nights elsewhere.

Looking at all the evidence and the reasonable inferences drawn from that evidence, the Department has proven that the petitioner and JY lived together during the overpayment period of September 1, 2011, through May 31, 2014. Therefore, it properly included JY's income in petitioner's household budget, and established an overpayment of FS benefits to petitioner.

CONCLUSIONS OF LAW

The county correctly determined that petitioner was overpaid FS from September 1, 2011, through May 31, 2014.

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 4th day of September, 2014.

\sPeter McCombs
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 4, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability