



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/158994

PRELIMINARY RECITALS

Pursuant to a petition filed July 14, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on August 13, 2014, at Janesville, Wisconsin.

The issue for determination is whether petitioner was overpaid \$1929.00 in FS benefits from July 1, 2013, through June 30, 2014, claim no. [REDACTED].

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: Mary Donahue

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner applied for FS benefits in May, 2013; petitioner reported joint custody of his son.

3. The respondent's Electronic Case Comments indicate that the mother of petitioner's son informed the respondent in October, 2013, that she had physical placement of their son 60% of the time.
4. In October, 2013, and again in May, 2014, petitioner provided the respondent with Reasonably Equivalent Placement Statements, indicating that he had physical placement of his son approximately 40% of the time.
5. Petitioner testified that his son now resides primarily with petitioner.
6. On or about July 10, 2014, the county sent petitioner a notice informing him that he was overpaid a total of \$1929.00 in FS benefits from July 1, 2013, through June 30, 2014, claim no. [REDACTED]

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. (emphasis added) 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, § 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).

In Wisconsin, the state agency has developed policy standards to determine FS household composition in cases involving children in joint custody. The policy is clear in requiring that the child cannot be a member of more than one FS group in the same month. See the FS Handbook, §3.4.1. State policy also determines the assignment of a joint custody child to a specific household:

Children are included in the household where they reside when they are under the care and control of a parent a person's biological, step, or adoptive mother or father regardless of age. Parenthood doesn't have to be verified or other caretaker in that household. There may be situations when the residence of a child a person's biological, step, or adopted son or daughter, regardless of age, is not easily determined. There are many methods that can be used to determine the child's residence. If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit.

If the parents can not or will not decide, compare the parents' activities and responsibilities against the following list and determine which one is exercising more control than the other:...

Only one parent can receive FS for a child. If you still can not determine which food unit the child should be in, the caretaker that first applies would be eligible. Use the best information available to make your decision, and document in case comments the basis of your determination. If you still can not determine which food unit the child should be in, call the CARES Client Assistance for Reemployment and Economic Support call center.

FS Handbook, §3.2.1.1, emphasis added in final paragraph; I left out the list of questions to be asked in the second-last paragraph because they are irrelevant to the issue at hand.

A person cannot receive FS in two households in a month. 7 C.F.R. §272.4(e)(1). When the mother's case closed, the petitioner's son was added to petitioner's case. The petitioner reported that he questioned the increase in FS benefits to respondent, and electronic Case Comments do show several contacts in April and May of 2014. However, the petitioner has not overcome the respondent's prima facie case indicating that petitioner's son was not living with him primarily during the overpayment period.

The petitioner provided the respondent with two Reasonably Equivalent Placement Statements, dated October 11, 2013 and May 26, 2014, respectively, indicating that he had physical placement of his son at least 40% of the time. The respondent further provided uncontested testimony from a representative of O'Brien and Associates who interviewed the petitioner on May 22, 2014. At the interview, petitioner informed the investigator that petitioner's son was with his mother the majority of the time, and that he attends school in Janesville; petitioner resides in Beloit. While the petitioner testified that physical placement changed sometime around April/May of 2014, nothing was provided to corroborate this testimony.

CONCLUSIONS OF LAW

The petitioner has failed to establish an error on the part of the respondent in establishing an overpayment of \$1929.00 in FS benefits from July 1, 2013, through June 30, 2014, identified as claim no. [REDACTED]

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 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.

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