FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[redacted]

DECISION

FOP/159508

PRELIMINARY RECITALS

Pursuant to a petition filed August 1, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on September 9, 2014. The Hearing for this matter was held at the same time as the Hearing for the following 2 closely related matters concerning the same petitioner: MOP-159511; and, CCO-159513.

The issue for determination is whether the following 3 Claims may be established against petitioner for overpayments of FS in the total amount of $12,583.00 covering the time period October 1, 2011 to March 31, 2014:

(I) Claim # [redacted]; October 1, 2011 to September 30, 2012; $6,276.00;

(II) Claim # [redacted]; October 1, 2012 to September 30, 2013; $5,426.00; and,

(III) Claim # [redacted]; October 1, 2013 to March 31, 2014; $881.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Thomas Miller, ESS Supervisor
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

OTHER PERSONS PRESENT:
[redacted], petitioner's mother
[redacted], Investigator
[redacted], Investigator
[redacted], ESS

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of La Crosse County, Wisconsin.
2. The County established the following 3 Claims against petitioner for overpayments of FS in the total amount of $12,583.00 covering the time period October 1, 2011 to March 31, 2014:

   (I) Claim # [redacted]; October 1, 2011 to September 30, 2012; $6,276.00;

   (II) Claim # [redacted]; October 1, 2012 to September 30, 2013; $5,426.00; and,

   (III) Claim # [redacted]; October 1, 2013 to March 31, 2014; $881.00.

3. Petitioner is the mother of minor children AC (4 years old) and BV (8 years old); the father of AC is adult male DC.
4. Petitioner, AC, BV, and DC all lived together during the time periods relevant to the FS overpayments listed in *Findings of Fact* #2, above.
5. DC had income during the time periods relevant to the FS overpayments listed in *Findings of Fact* #2, above; this put petitioner over income for FS during those time periods.

DISCUSSION

The County argues that petitioner was over the FS income limit during the time periods in question because DC lived with her (and the children) and had income that put them over the limit.[1] Petitioner denies that she and DC lived together during the time periods in question.

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[1] For purposes of FS, income includes all household income from wherever source, excluding only certain specific items not relevant here. 7 C.F.R. §§ 273.9(b) & (c) (2011); *FoodShare Wisconsin Handbook* ["FSWH"] 4.3.1. Earned income of any household member age 18 years old or older is to be included in the FS household income. 7 C.F.R. § 273.9(c)7. (2011); FSWH, 4.3.2.2.3. The evidence in the record of this matter is that DC made over $50,000 in 2013 alone.

The basic definition of a household for purposes of FS is a group of individuals who live together and customarily purchase food and prepare meals together for home consumption. 7 C.F.R. §§ 273.1(a)(3) (2011); *FoodShare Wisconsin Handbook* ["FSWH"] 3.3.1.1. A person under 22 years of age who is living with his or her natural or adoptive parents must be considered as customarily purchasing food and preparing meals together with his or her parents even if he or she does not do so, and thus must be included in the same household as his or her parents. 7 C.F.R. §§ 273.1(b)(1)(ii) (2011); FSWH 3.3.1.3.2. Therefore, persons who live together with a minor child they have in common are, by definition, part of the same FS household. 7 C.F.R. § 273.1(b)(1)(ii) (2011); See also, FSWH 3.3.1.3.2.

This matter must be decided based on a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (September 2001). The burden is on the County to show that DC lived with petitioner and the children during the entire time periods in question. The County has more than satisfied this burden. Therefore, it must be concluded that DC lived with petitioner and the children during the entire time period in question.

The County presented overwhelming convincing evidence that establishes that DC lived with petitioner and the children during the all relevant time periods. This includes: documentation from the Wisconsin Department of Transportation ["DOT"] (vehicle titles; driver's license); credit reports from *TransUnion* and *Experian*; Wisconsin Circuit court records; voter registration; voting records; child support records (both Wisconsin and Illinois); school records; *Facebook* entries; interviews with petitioner's neighbors; interviews with those at the address in La Crosse where DC was claimed to have lived; observation of DC traveling from work to the address where petitioner and the children live; an investigative report dated May 13, 2013; and , a second investigative report dated April 16, 2014.

Petitioner testified that she and DC were together but fought and could not make it work. She testified that DC uses her address as his mailing address and that he also used other addresses. She testified that she and DC begin dating again in the summer of 2013, that DC moved back in with her in March 2014 (but was not "full moved-in" until the summer of 2014), and that she notified the County of this. Given all of the other evidence in the record of this matter, petitioner's claim that DC did not live with her (and the children) during the time period of the overpayments is simply not credible.

CONCLUSIONS OF LAW

For the reasons discussed above, the following 3 Claims may be established against petitioner for overpayments of FS in the total amount of $12,583.00 covering the time period October 1, 2011 to March 31, 2014:

(I) Claim # [redacted]; October 1, 2011 to September 30, 2012; $6,276.00;

(II) Claim # [redacted]; October 1, 2012 to September 30, 2013; $5,426.00; and,

(III) Claim # [redacted]; October 1, 2013 to March 31, 2014; $881.00.

NOW, 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 16th day of September, 2014

\sSean P. Maloney
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 16, 2014.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability