FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/160089

PRELIMINARY RECITALS

Pursuant to a petition filed August 25, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 06, 2014, at Madison, Wisconsin.

The issue for determination is whether the agency met its burden to establish the claim of overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Luisa McKy
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Dane County.
2. [redacted] owns a home on [redacted]. in Madison. For some period in the past, [redacted] and [redacted] were in a relationship. [redacted] has 4 children.
3. At some point prior to the overpayment period's beginning date, [redacted] left the home.

4. [redacted] worked at [redacted] in Milwaukee from October 2012 to October 2013. During this period, her residence was not in the Madison home. Mr. [redacted] remained in the home with the four children.

5. [redacted] became employed in Madison in December 2013. She moved to Madison at that time and began residing in the home.

6. The agency issued a FoodShare overpayment notice on 7/25/14 for the amount of $4,680 for the period from 1/1/13 to 6/30/13 and another notice in the amount of $5,865 for the period from 7/9/13 to 6/30/14.

7. The agency issued a Medical Assistance overpayment notice on 7/24/14 in the amount of $3,965 for the period from 1/1/13 to 6/30/14.

8. The agency issued a CC overpayment notice on 7/24/14 in the amount of 26,295.21 for the period from 2/1/13 to 6/30/14.

9. Petitioner appealed all of these notices.

DISCUSSION

At hearing, it is the burden of the agency to prove an overpayment by the preponderance of evidence. The agency's case rests on the contention that Ms. [redacted] [redacted] lived in the same home as [redacted] [redacted] during the entire overpayment period. At hearing, the [redacted] credibly testified that she did not live with [redacted] during the entire overpayment period. [redacted] described an abusive and unhealthy living environment. She also explained her living arrangements which were untraditional, but believable. Also, [redacted] did concede to living with [redacted] for part of the time of the claimed overpayment.

The agency's case was based on documentary proof such as voter registrations, employer records, credit reports, etc. reflecting [redacted]'s address being the same as [redacted]'s. [redacted]'s explanation was that the address had been her residence and that [redacted] and her children remained in the home during a period while [redacted] lived in Milwaukee with another man. This explanation in not entirely inconsistent with a person who would keep her address on record with official entities at the same address. It is not surprising that she would not have changed her voter registration or credit records to reflect residence with her new boyfriend. After all, the home that [redacted] left to allow [redacted] to remain in while caring for her children was a home she owned.

The agency points to several police reports in which [redacted] or [redacted] made statements that [redacted] lived in the home. The reports, however, stem from domestic incidents in 2014 during the time that [redacted] concedes to being in the home. It is notable that there are no similar domestic incident reports in the record for the period before December 2013. This actually provides some further support for the contention that [redacted] was not in the home with [redacted].

On this record, I am persuaded that an overpayment exists for the period to which [redacted] concedes after December 1, 2014. But, the agency's proof was not sufficient to overcome the seemingly credible and testimony and logical explanations of [redacted] and [redacted].

CONCLUSIONS OF LAW

The agency did not meet its burden of establishing the entire overpayment period and amount claimed.

THEREFORE, it is **ORDERED**

That the matter is remanded to the agency to recalculate the overpayment amount to include only the period from December 1, 2013 onward. New notices must be issued with new appeal rights. These actions must be completed within 10 days.

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 22nd day of October, 2014

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\sJohn P. Tedesco
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 October 22, 2014.

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