



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redact

DECISION

FOP/161591

PRELIMINARY RECITALS

Pursuant to a petition filed October 29, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Calumet County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on November 26, 2014.

The issue for determination is whether it was correct to establish the following Claim against petitioner for an alleged overpayment of FS: Claim # Redact; July 1, 2014 to October 31, 2014; in the total amount of \$1,851.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
BY: Lynn Brenner, ES Manager
Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Calumet County, Wisconsin.

2. The County established the following Claim against petitioner for an alleged overpayment of FS: Claim # Redact; July 1, 2014 to October 31, 2014; in the total amount of \$1,851.00.
3. The alleged FS overpayment detailed in *Finding of Fact #2*, above, is based on the County's determination that petitioner was not living with her children but the children were still counted as part of her FS household.
4. Petitioner was living with her children during the time period August 29, 2014 to September 24, 2014 and again starting October 26, 2014.

DISCUSSION

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.¹ 7 C.F.R. §§ 273.1(a)(3) (2011); *FoodShare Wisconsin Handbook* ["FSH"] 3.3.1.1.

It is not disputed that petitioner's children were living with her during the time period August 29, 2014 to September 24, 2014 and again starting October 26, 2014. The County argues that those time periods should still be part of the overpayment because "the change was not reported timely regulations state the entire period is an overpayment." It is not clear what regulations the County means. Federal FS regulations make no such statement. Federal FS regulations state that an FS overpayment should be calculated by determining "the correct amount of benefits for each month that a household received an overpayment" and subtracting that from "the benefits actually received." 7 C.F.R. § 273.18(c)(1)(ii) (2011).

The *FoodShare Wisconsin Handbook* does state: "When calculating the overissuance, consider the FS group's reporting requirements. Do not use income or expenses, or changes in income and expenses that were not reported and were not required to be reported." FSWH 7.3.2.1. However, that statement limits itself to "income or expenses, or changes in income and expenses that were not reported and were not required to be reported."

The current alleged overpayment cannot be sustained and must be reversed. The County may recalculate and reestablish an FS overpayment Claim for an appropriate time period. If it does so it must send petitioner written notice with appeal rights.

CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct to establish the following Claim against petitioner for an alleged overpayment of FS: Claim # Redact; July 1, 2014 to October 31, 2014; in the total amount of \$1,851.00.

NOW, THEREFORE, it is

¹ Spouses who live together must be considered as customarily purchasing food and preparing meals together even if they not do so, and thus must be included in the same household. 7 C.F.R. §§ 273.1(b)(1)(i) (2011); FWH 3.3.1.3.1. Likewise, a person under 22 years of age who is living with his or her natural or adoptive parents or step-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); FWH 3.3.1.3.2.

ORDERED

That this matter be REMANDED to the County and that, within 10 days of the date of this *Decision*, the County not establish the following claim against petitioner for an alleged overpayment of FS and send a letter to petitioner stating that it has done this: Claim # Redact; July 1, 2014 to October 31, 2014; in the total amount of \$1,851.00. The County may recalculate and reestablish an FS overpayment Claim for an appropriate time period. If it does so it must send petitioner written notice with appeal rights.

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 5th day of December, 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 December 5, 2014.

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