



FH

Redact

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

In the Matter of:

Redact

DECISION

FOP/161702

PRELIMINARY RECITALS

Pursuant to a petition filed November 3, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Rock County Department of Social Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on November 26, 2014. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: MOP-161703.

The issue for determination is whether the following 2 Claims may be established against petitioner for overpayments of FS in the total amount of \$7,667.00 covering the time period March 4, 2013 to October 31, 2014:

- (I) Claim # Redact; January 1, 2014 to October 31, 2014; \$5,257.00; and,
- (II) Claim # Redact; March 4, 2013 to December 31, 2013; \$2,410.00.

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: Pam Edmonds, ES Supervisor
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

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

FINDINGS OF FACT

1. Petitioner (CARES # [Redact]) is a resident of Rock County, Wisconsin.
2. The County established the following 2 Claims against petitioner for overpayments of FS in the total amount of \$7,667.00 covering the time period March 4, 2013 to October 31, 2014:
 - (I) Claim # [Redact]; January 1, 2014 to October 31, 2014; \$5,257.00; and,
 - (II) Claim # [Redact]; March 4, 2013 to December 31, 2013; \$2,410.00.
3. Petitioner has 2 children (4 months old & 16 months old) in common with adult male JB.
4. During the time period of the overpayments detailed in *Finding of Fact #2*, above, petitioner, JB, and their children all lived together.
5. Petitioner never reported to the County that JB was living with her during the time period of the overpayments detailed in *Finding of Fact #2*, above; she failed to report this on an August 5, 2013 Six Month report Form [“SMRF”], during a February 3, 2014 interview, and also on an August 5, 2014 SMRF.
6. During the time period of the overpayments detailed in *Finding of Fact #2*, above, JB had income; JB’s income put petitioner over the FS income limit.

DISCUSSION

The County argues that petitioner was over the FS income limit during the time periods in question because JB lived with her (and the children) and had income that put them over the limit.¹

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.

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.

This matter must be decided based on a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (February 2013). The burden is on the County to show that JB lived with petitioner and the children during the entire time periods in question. The County has more than satisfied this burden.

Petitioner argues that JB did not live with her and the children during the time period in question. However, the County presented convincing and credible evidence that JB was living in the same home with petitioner and the children during the time period in question. First, they have 2 young children in common one born very recently in August 2014 and the other born just over 1 year ago in July 2013. Second, on August 17, 2014 petitioner stated to an investigator that JB is on the lease [where petitioner and the children live] and pays all the bills, and that since March 2013 he has stayed in the home at least 4 to 5 nights per week. Third, copies of leases dated May 23, 2011 and February 22, 2013 show that JB is a tenant at the same address as petitioner and the children. Fourth, Wisconsin Department of Transportation ["DOT"] databases show the address for JB as the same address where petitioner and the children live.

Petitioner testified that she never told the investigator that since March 2013 JB has stayed in the home at least 4 to 5 nights per week. She testified that the number of nights per week he stayed varied but it was consistently every weekend (2 nights) and 1 or 2 nights during the week. Petitioner's testimony is not credible in light of all the other evidence in this matter. Further, even if it were credible it would still put JB in the home about ½ the time. Petitioner also testified that she put JB on the lease in case something happened so he could help. This is not credible in light of all the other evidence in this matter.

JB testified that he was not consistently living with petitioner and stayed with a friend. This is not credible in light of all the other evidence in this matter.

Based on all of this evidence it must be concluded that during the time period of the overpayments petitioner, JB, and their 2 children all lived together.

Finally, petitioner claims that the monthly income of JB used to calculate the amount of the overpayment was inaccurate in some months. The evidence in the record of this matter is not sufficient to make this determination. Therefore, this matter will be remanded to the County for a recalculation of the overpayment using the best available information (including JB's check stubs).

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner, JB, and their 2 children all lived together during the time period March 4, 2013 to October 31, 2014 and petitioner failed to report this.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the County, and that, within 10 days of the date of this *Decision*, the County recalculate the amount of the following 2 FS overpayments using the best available information (including JB's check stubs) and send a new *FoodShare Overpayment Notice* (with appeal rights) to petitioner:

- (I) Claim # Redact; January 1, 2014 to October 31, 2014; \$5,257.00; and,
- (II) Claim # Redact; March 4, 2013 to December 31, 2013; \$2,410.00.

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 9th day of December, 2014

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 9, 2014.

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