



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

FOP/162103

PRELIMINARY RECITALS

Pursuant to a petition filed November 19, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Dane County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on December 17, 2014, by telephone.

The issue for determination is whether petitioner was overpaid FS because she was living with her mother.

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Redact
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Dane County.
2. Petitioner originally applied for FS as a single person in December, 2011. At that point she was under age 22, and the address was different than her mother's address.
3. Petitioner filed a six-month report form in June, 2012. She reported a new address on Redact, and that only she was in the FS household. She continued to file reviews thereafter without

reporting her mother in the household. Her case closed from December 1, 2012 until November 13, 2013.

4. As it turned out petitioner's mother also lives at the [Redact] address. Petitioner disclosed that she lived with her mother at an appointment on June 2, 2014. At that point the worker asked her for her mother's financial information because petitioner still was under age 22. Petitioner refused to provide it and the FS closed effective May 31, 2014.
5. The county determined that all FS paid to petitioner were overpaid from June, 2012 through May, 2014. Because petitioner did not provide her mother's financial information the county could not determine if petitioner was eligible for any of the FS received. The county informed petitioner that she was overpaid a total of \$2,314 in FS, claim nos. [Redact] (June 18 through November 30, 2012) and [Redact] (November 13, 2013 through May 31, 2014). A third claim, no. [Redact], for the period December, 2011 through June, 2012, was rescinded by the agency prior to the hearing because petitioner lived at a different address during that period.

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. 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, Appendix 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).

The federal FS regulations define FS household composition as follows:

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. 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). FS rules provide further as follows:

The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

- (i) Spouses;
- (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and
- (iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent.

7 C.F.R. §273.1(b)(1); see also FS Handbook, Appendix 3.3.1.2. Under the federal FS law a child under age 22 must be included in an FS household with her parent if they live together. It does not matter if they actually purchase and prepare meals together.

Petitioner testified that she told a representative about her living situation and the representative said it was okay to report her living situation like she did. Unfortunately she does not remember who that person was. Nevertheless, even if it was an economic support worker, the result is still that petitioner was overpaid FS, and the agency must recover the overpayment even in situations where the overpayment was caused by agency error. I cannot conclude that this was agency error because petitioner was unable to specify who told her the incorrect information.

Under FS rules petitioner could not receive FS absent her mother during periods when she lived in the same residence. Thus the county had to determine if petitioner was overpaid. To do so correctly, the county had to obtain petitioner's mother's financial information to determine if the household would have been eligible for any or all of the FS received during the period in question. Because petitioner refused to provide her mother's information, the county had to assume that all FS issued were overpaid. I did check to see if petitioner's mother had an ongoing case in the system, and she did not. Thus the county would need information about petitioner's mother's income to determine if petitioner was eligible for any of the FS that she received during the overpayment periods.

CONCLUSIONS OF LAW

The county correctly determined that petitioner was overpaid FS because she failed to report that her mother lived in the same residence with her, and under FS rules her mother had to be included in petitioner's FS unit because petitioner was under age 22.

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 19th day of December, 2014

\sBrian C. Schneider
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 19, 2014.

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