FH
Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redact
Redact
Redacted

DECISION

FOP/161984

PRELIMINARY RECITALS

Pursuant to a petition filed November 17, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held on December 23, 2014 at the offices of the Division of Hearings and Appeals ["DHA"] in Madison, Wisconsin. At petitioner's request a Hearing scheduled for December 16, 2014 was rescheduled. 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-161986.

The issue for determination is whether it was correct to establish the following 2 Claims against petitioner for overpayments of FS in the total amount of $6,110.00 for the time period February 1, 2013 to September 30, 2014:

Claim Number Redact; February 1, 2013 to January 31, 2014; $3,431.00; and,
Claim Number Redact; February 1, 2014 to September 30, 2014; $2,679.00.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Petitioner's Representative:

Redact
Attorney
Redact, S.C.
Redact
Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
BY: Redact, Overpayment Specialist (appeared via telephone)
Dane County Department of Human Services

1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

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

FINDINGS OF FACT

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

2. The County established the following 2 Claims against petitioner for overpayments of FS in the total amount of $6,110.00 for the time period February 1, 2013 to September 30, 2014:

   Claim Number Redact; February 1, 2013 to January 31, 2014; $3,431.00; and,
   Claim Number Redact; February 1, 2014 to September 30, 2014; $2,679.00.

   Exhibits A, B, R3, R5 & R7.

3. Petitioner was married to adult female CMM from June 2001 to June 2012 when they got divorced. Exhibits B, R1 & R6.

4. Petitioner and CMM have a minor daughter ["HEM"] in common who was born in May 2008. Exhibit B, R6.

5. CMM received FS during at least the time period February 2013 to September 2014. Exhibits B, D, F, G2, G4, H, L & M.

6. During the time period February 2013 to September 2014 CMM and HEM lived with petitioner in a home petitioner owns in Redact, Wisconsin; CMM did not report this to the County. Exhibits B, C1, F, G1, G2, G4, I, J1, J2, K1, K2 & R3.

7. During the time period February 2013 to September 2014 petitioner was not included as part of CCM's FS household, as he should have been, and had earned income which put CMM over the FS income limit and made her ineligible for FS. Exhibits B, G4, H & L.

DISCUSSION

The law provides that each person who was an adult member of the FS Household when the overpayment occurred is responsible for paying the claim. 7 C.F.R. § 273.18(a)(4)(i); *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.2. All adults or emancipated minors that were included in the household or should have been included in the household at the time the overpayment occurred are liable for the repayment of the overissuance of FS benefits. FWH 7.3.1.2.; Exhibit E2. Further, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault. All FS overpayments, regardless of fault, must be collected. A finding of fraudulent intent is not necessary. 7 C.F.R. § 273.18(b); FWH 7.3.1.1 & 7.3.1.2.

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); FWH 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.[1] 7 C.F.R. §§ 273.1(b)(1)(ii); FWH 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); See also, FWH 3.3.1.3.2. Thus, petitioner, CMM, and their daughter (HEM) must all be in the same FS household if they live together.

This matter must be decided by a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (February 2013).

The County presented convincing and credible evidence that CMM and HEM lived with petitioner at his home in Redact, Wisconsin during the time period in question. Government vehicle registration records, voter registration records, and home schooling records all show CMM's address as the same as petitioner's. Exhibits C1 & C2. CMM's employers show CMM's address as the same as petitioner's. Exhibit G1 & G4. *TransUnion* credit reports also associate CMM with petitioner's address. Exhibit C1. Internet social media entries strongly suggest that petitioner, CMM, and HEM lived together during the time period in question. Exhibit C1. Petitioner and CMM admit that they and HEM all lived together prior to October 2012 and starting again in August 2014 and they acknowledge that they all sometimes stayed together overnight in petitioner's home between those times. Exhibit B. In addition, CMM's FS was used almost exclusively at the same store in Redact, Wisconsin (where petitioner's home is located) even though she claims to have been living in Wisconsin Rapids, Wisconsin for most of the time period in question. Exhibits B & M. CMM admits to sharing at least some food with petitioner during the time period in question. Exhibit B. Finally, in August 2014 petitioner's was advised of the County's intent to pursue an FS overpayment and was given an opportunity to provide statements from the individuals (specifically, her sister) with whom she claimed to have been living during the time period in question. No such statements were ever provided. Exhibit B.

Petitioner and CCM both testified. CMM testified that they resided together until October 2012 when she moved out and that they did not "consistently" reside together after that. She testified that she resided in Adams County and also with her sister in Wisconsin Rapids, Wisconsin. See, Exhibits R2, R8, R9 & R11.[2] However, the person who lives at one of the addresses where CMM claims to have resided states that CMM never lived there. Further, petitioner never provided a statement from her sister (or anyone else from a place where she claims to have lived) even though she was offered the opportunity to do so (she testified that she did not want to "bring her family into this"). CMM testified that she used her FS in Redact, Wisconsin because she was there to switch-off custody of her daughter with petitioner and because she had coupons. She tested that she used petitioner's address for employers, etc. because it was the address on her driver's license. Petitioner testified that CMM moved out in October 2012 and did not reside with him again until August 2014 (but she did visit and sometimes stayed overnight). In light of all of the other evidence, the testimony of CMM and petitioner is not credible. The preponderance of the credible evidence in the record of this matter is that CMM and HEM lived with petitioner during the time period in question.

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[1] Likewise, 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 must be considered as customarily purchasing food and preparing meals together with that person, even if they do not do so, and thus must be included in the same FS household. 7 C.F.R. § 273.1(b)(1)(iii); FWH 3.3.1.3.3. Additionally, spouses must be considered as customarily purchasing food and preparing meals together, even if they do not do so, and thus must be included in the same FS household if they live together. 7 C.F.R. § 273.1(b)(1)(i); FWH 3.3.1.3.1.

[2] It is noted that the dates of exhibits R8, R9, and R11 are outside of the overpayment period. Exhibit R10 is not dated.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to establish the following 2 Claims against petitioner for overpayments of FS in the total amount of $6,110.00 for the time period February 1, 2013 to September 30, 2014:

Claim Number Redact; February 1, 2013 to January 31, 2014; $3,431.00; and,
Claim Number Redact; February 1, 2014 to September 30, 2014; $2,679.00.

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 7th day of January, 2015

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\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 January 7, 2015.

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