



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/162589

PRELIMINARY RECITALS

Pursuant to a petition filed December 12, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Public Assistance Collection Unit ["PACU"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on February 3, 2015. With petitioner's agreement a Hearing scheduled for January 7, 2015 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/162590.

The issue for determination is whether the following 5 Claims may be established against petitioner for overpayments of FS in the total amount of \$23,089.00 covering the time period July 2010 to October 2014: Claim # [REDACTED] (\$1,867.00); Claim # [REDACTED] (\$3,344.00); Claim # [REDACTED] (\$7,901.00); Claim # [REDACTED] (\$5,674.00); and, Claim # [REDACTED] (\$4,303.00).

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

BY: Keegan T. Trentzsch, Fraud Investigator
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County, Wisconsin.
2. PACU established the following 5 Claims against petitioner for overpayments of FS in the total amount of \$23,089.00 covering the time period July 2010 to October 2014: Claim # [REDACTED] (\$1,867.00); Claim # [REDACTED] (\$3,344.00); Claim # [REDACTED] (\$7,901.00); Claim # [REDACTED] (\$5,674.00); and, Claim # [REDACTED] (\$4,303.00).
3. Petitioner is the mother of 3 minor children KRG (8 years old), JJG (7 years old), and MG, Jr. (4 years old); the father of all 3 is adult male MAG.
4. Petitioner, KRG, JJG, MG, Jr., and MAG all lived together during the time periods relevant to the FS overpayments listed in *Findings of Fact* #2, above.
5. MAG had income during the time periods relevant to the FS overpayments listed in *Findings of Fact* #2, above.

DISCUSSION

PACU argues that petitioner was over the FS income limit during the time periods in question because MAG lived with her (and their children) and had income that put them over the limit.¹ Petitioner acknowledges that she lived with their 3 children in a house owned by MAG during the time periods in question, but denies that MAG lived with them.

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) (2015); *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) (2015); 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) (2015); See also, FSWH 3.3.1.3.2.

This matter must be decided based on a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (September 2001). The burden is on the PACU to show that MAG lived with petitioner and their children during the entire time periods in question. PACU has more than satisfied this burden. Therefore, it must be concluded that MAG lived with petitioner and their children during the entire time period in question.

PACU presented overwhelming convincing evidence that establishes that MAG lived with petitioner and their children during the all relevant time periods. This includes: the fact that MAG and petitioner have 3 young children in common whom MAG states he loves; the fact that MAG owns the house where petitioner and their children live; documentation from the Wisconsin Department of Transportation ["DOT"]; credit reports from *TransUnion*; Wisconsin Circuit court ["CCAP"] records; *National*

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) (2015); *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. (2015); FSWH, 4.3.2.2.3.

Comprehensive Report Plus Associates documents; interviews with petitioner's neighbor; *Facebook* entries; child support documents; MAG's paystubs; observation of the home where petitioner lives (and which is owned by MAG); and, a *Summary Investigative Report*. In addition, petitioner has stated that MAG "is there [in the house where petitioner and their children live] daily to help with the kids . . . he is also there on the weekends and he does remodeling to the home." She also admitted that MAG "stores" 3 of his vehicles and his boat at the house where petitioner and their children live (and which is owned by MAG).

Petitioner and MAG both testified that they did not live together during the overpayment period (although they claim that MAG moved back in shortly after the overpayment period ended). They also produced a letter dated January 6, 2015 from a person which states that MAG "has been living with me since October 2009." However, that letter contained no address, that same person told an investigator that "he signed a letter that [petitioner] gave him regarding [MAG] living with him", and that same person refused to testify at the Hearing in this matter. Given all of the other evidence in the record of this matter, petitioner's and MAG's claim that MAG did not live with petitioner and their children during the time period of the overpayments is simply not credible.

Based on all of this evidence it must be concluded that during the time period of the overpayments petitioner, MAG, and their 3 children all lived together.

Finally, in her request for a Hearing petitioner states: "I was sent letters informing me that I had overpayment of benefits. In those letters I got a few sheets that have mine and [MAG] Earned Income on it for the last few years. [MAG] has all of his check stubs and the numbers don't match. There are a few big amounts that say I got over 700.00 for a few months each year. Don't know where that is from. The child support I have been getting is added in twice." The evidence in the record of this matter is not sufficient to resolve these concerns. Therefore, this matter will be remanded to PACU for a recalculation of the income used to establish the overpayments using the best available information (including MAG's check stubs).

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner, MAG, and their 3 children all lived together during the time period of the FS overpayments detailed in *Findings of Fact #2*, above.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to PACU, and that, within 10 days of the date of this *Decision*, PACU recalculate the income used to establish the 5 FS overpayments detailed in *Findings of Fact #2*, above, using the best available information (including MAG's check stubs), and send a new *FoodShare Overpayment Notice* (with appeal rights) to petitioner (petitioner may not again contest the fact that she and MAG lived together during the time period of the overpayments but she may contest the income calculations). The 10-day time period allowed in this Order may be extended if additional information is required from petitioner but may only be extended by the number of days between the time PACU request the additional information in writing and the time petitioner provides the additional information in written form.

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 27th day of February, 2015

\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 February 27, 2015.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability