



FH

[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/ [REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed December 29, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Capital Consortium to recover FoodShare benefits (FS), a hearing was held on April 16, 2015, by telephone. Hearings set for January 28, February 11, and March 11, 2015 were rescheduled at the petitioner’s request.

I note that for confidentiality purposes names are used only in the caption and Parties in Interest, as those two areas are redacted by computer software. Elsewhere the word “petitioner” or initials are used.

The issue for determination is whether the agency correctly determined an FS overpayment due to inaccurate household members and income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Alex Premo
Dane County Dept. of Human Services
1819 Aberg Avenue, Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Columbia County.

2. Petitioner resides with his girlfriend [REDACTED], their daughter [REDACTED] and her older daughter [REDACTED]. In December, 2010 [REDACTED] applied for FS, Medical Assistance (MA), and child care. Child care was denied because petitioner was listed as unemployed. FS and MA were granted, but FS closed effective February 1, 2011 because income was over the limit.
3. [REDACTED] reapplied for FS on February 15, 2011, reporting that petitioner was out of the home. FS reopened. [REDACTED] requested child care in April, 2011. Child care opened.
4. In August, 2011, petitioner and [REDACTED] stipulated in [REDACTED] paternity case that petitioner was the father. Petitioner and [REDACTED] were listed at separate addresses, but petitioner was not ordered to pay child support because he was reported to be unemployed.
5. In all other transactions except the paternity case, petitioner used [REDACTED]'s [REDACTED] address as his address. Those transactions included motor vehicle registrations, voting, employment with two recorded employers, and police contacts.
6. The children began to attend day care in April, 2011 ([REDACTED] started April 14, and [REDACTED] started May 6). Petitioner's address on the day care application was a post office box, but he was listed as the children's father/guardian and [REDACTED]'s fiancé, and he regularly picked up/dropped off, and had regular contact with the provider about the care and payment for the services. The provider believed that petitioner and [REDACTED] lived together.
7. In January, 2012, a domestic disturbance occurred at approximately 4:00 a.m. between petitioner and [REDACTED]. [REDACTED] told a sheriff's deputy that she and petitioner had been living together for some time. Local police believe that petitioner and [REDACTED] have lived together regularly since 2010.
8. The [REDACTED] home is owned by petitioner's father. During the period when petitioner allegedly lived outside of [REDACTED]'s home he allegedly lived with his parents or unnamed friends.
9. The children's last day at the day care was December 28, 2012. [REDACTED]'s child care assistance closed effective January 1, 2013. On January 7, 2013, [REDACTED] reported to the economic support agency that petitioner moved back into the home.
10. After an investigation the agency determined that petitioner lived with [REDACTED] throughout 2011 and 2012. The agency thereafter attempted to obtain petitioner's income information for the period January, 2011 through the present. With exception of the two recorded jobs with [REDACTED] and [REDACTED], no response was received. Petitioner refused to provide tax returns for the period and refused to sign a statement saying that he did not file tax returns.
11. [REDACTED]'s MA and FS case closed September 1, 2014.
12. By notices dated November 26, 2014, the agency informed [REDACTED] that she was overpaid a total of \$7,052 in FS during the period April, 2011 through August, 2014, claim nos. [REDACTED], [REDACTED], and [REDACTED]. The claim was for all FS issued during that period; because petitioner and [REDACTED] provided no information about petitioner's income, the agency could not make a determination whether the household was eligible for any FS. Petitioner was listed as a liable party and also received overpayment notices.

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 law, if petitioner and [REDACTED] live with their child in common, they must be included together in the FS household. As such, petitioner's financial information must be provided so proper benefits can be determined. It is undisputed that petitioner lived with [REDACTED] in 2013 and 2014, yet he has provided no response concerning his income. The agency has asked for something as simple as a statement that he did not file income tax returns, and he has refused to provide anything.

The first issue is whether the couple lived together in 2011 and 2012. I conclude that the evidence shows that at best they might have been separated briefly, but that they remained a household for the vast majority of the time if not the whole time. The obvious indications are that petitioner always used the [REDACTED] address as his address for business and legal transactions, that he had no verifiable alternative residence, and that both the day care provider and the local police believed they lived together. [REDACTED] reported to the police in January, 2012 that they were living together, verified in part by the fact that a domestic disturbance occurred in the early morning hours of January 9.

There are other subtle indications. For example, [REDACTED] reported that [REDACTED] was out of the household almost immediately after her benefits case closed and almost immediately before she reapplied for child care, when child care had been denied before because of petitioner's unemployment. Then, after the children stopped attending child care in late December, 2012, [REDACTED] immediately reported that petitioner was back in the household; at that point his employment status no longer affected child care assistance eligibility.

The only evidence that petitioner ever was out of the house is from petitioner's and [REDACTED]'s self-serving testimony, written statements from their parents, who would be motivated to protect their interests, copies

of undated envelopes sent to petitioner at his father's home, copies of a life insurance policy that likely predated petitioner's move from his father's home, a snowmobile registration from prior to 2011, and the paternity stipulation and order from August, 2011. I have marked petitioner's exhibits as a package, Exhibit P-1. I initially thought that the paternity stipulation at least provided some bit of legitimate verification that they were apart, but given that petitioner was not ordered to pay child support, they would have had no reason to report living together then, especially knowing that living together could have affected at least the child care assistance. In addition, the address provided by petitioner to the paternity court again was his father's address.

The second issue is the finding that all benefits FS issued to [REDACTED] were overpaid. There is evidence that petitioner was working during this period, apparently for friends and possibly for cash. Of particular note is the April 10, 2012 case note from petitioner's criminal case in which he asks permission to travel to Duluth for employment purposes from April 11 to April 15, 2012. Exhibit G, page 3. [REDACTED] stated at this hearing that petitioner asked for permission just in case he maybe, might have the opportunity to work. That is absolutely unbelievable. On April 10 he asks to leave the next day for work he might not actually have? Petitioner has never provided any record of income from the trip to Duluth.

The agency has every right to request information about petitioner's income, especially in light of the credible suspicions that this couple has been deliberately cheating the system to obtain benefits. Given that the agency has received no response, it is justified in assuming that the household would not have been eligible for any benefits during the period in question. I thus will affirm the overpayment claim.

CONCLUSIONS OF LAW

The agency correctly determined FS overpayments based upon reporting the household composition accurately and refusing to provide income information concerning a household member.

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 30th day of April, 2015

\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 April 30, 2015.

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