



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/163075

PRELIMINARY RECITALS

Pursuant to a petition filed January 6, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Price County Department of Social Services [“County”] in regard to FoodShare benefits [“FS”], a Hearing was held via telephone on March 10, 2015. At petitioner’s request a Hearing scheduled for February 10, 2015 was rescheduled.

The issue for determination is whether the following Claim may be established against petitioner for an alleged overpayment of FS: Claim # [REDACTED] for the time period November 1, 2013 to May 31, 2014 in the total amount of \$2,291.00.

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: Denise Jeffers, ES Supervisor
Price County Department of Social Services
PO Box 88
Normal Bldg., 104 S. Eyder Avenue, Rm. 1
Phillips, WI 54555

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Price County, Wisconsin.
2. The County established the following Claim against petitioner for an alleged overpayment of FS: Claim # [REDACTED] for the time period November 1, 2013 to May 31, 2014 in the total amount of \$2,291.00.
3. The basis of the overpayment claim in *Findings of Fact #2*, above, is that petitioner lived with adult male RMW during the time period of the alleged overpayment and RMW had income that lowered the amount of FS petitioner was entitled to receive.
4. Petitioner and RWM had no children in common during the time period of the alleged FS overpayment Claim listed in *Findings of Fact #2*, above (although they now have a child in common ["TLJW"] who was born in August 2014).
5. Petitioner received a computer-generated letter notice dated July 22, 2014 and entitled *Notification of FS Overissuance* notifying her of the FS overpayment detailed in *Finding of Fact #2*, above; she requested a Hearing in writing in July 2014 soon after receiving that July 22nd letter notice but for unknown reasons that request was not received and when she became aware of this she made a second written request for a Hearing.

DISCUSSION

The law provides that each person who was an adult member of the FS household when an overpayment occurred is responsible for paying the claim. 7 C.F.R. § 273.18(a)(4)(i) (2015); See also, *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.2. All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(a) (2015); See also, FWH 7.3.1.1.

The County argues that petitioner was overpaid FS during the time period in question because RMW lived with her and had income that lowered the amount of FS petitioner was entitled to receive. Petitioner admits that she and RMW lived together during the time period in question but maintains that they did not customarily purchase food and prepare meals together.

Even though RMW lived with petitioner, RMW's income would count when determining petitioner's FS eligibility only if RMW and petitioner were part of the same FS household. 7 C.F.R. § 273.9(intro.) (2015). There is a legal definition for what constitutes an FS household. 7 C.F.R. § 273.1 (2015); See also, FWH 3.3.1. Income of a non-household member is not budgeted as income for the household. FWH 4.3.1.

Persons who live together with minor children they have in common are, by definition, part of the same FS household. 7 C.F.R. § 273.1(b)(1) (2015); See also, FWH 3.3.1.2. However, petitioner and RMW had no children in common during the time period of the alleged FS overpayment.

With certain special exceptions not applicable here, two unrelated adults that do not have a child in common and who live together are part of the same FS household only if either: (1) they customarily purchase food and prepare meals together; or, (2) there is a child living with the adults and the child is under the parental control of both adults (or the child is the child of one of the adults and also under the parental control of the other adult). 7 C.F.R. §§ 273.1(a) & (b)(1)(iii) (2015); FWH 3.3.1. The County has offered little evidence that either (1) or (2) is true. In fact, the only substantial evidence in the record of this matter concerning those 2 things supports petitioner's claim that she and RMW did not customarily purchase food and prepare meals together during the time period in question (*Case Comments* dated July 24, 2014, May 15, 2014, May

6, 2014 & March 19, 2009; March 17, 2009 purchase and prepare statement signed by petitioner and RMW; petitioner's testimony). Therefore, based on the evidence in the record of this matter, it cannot be concluded that RMW was part of petitioner's household during the time period in question. It follows that the alleged overpayment cannot stand and must be reversed.

The County argues that petitioner cannot now claim that she and RMW did not customarily purchase food and prepare meals together because she did not report RMW in her home. However, the County was unable to produce any authority to support this proposition and none has been found.

Finally, an FS appeal is timely only if it concerns an action by the county agency which occurred in the prior 90-days. 7 C.F.R. § 273.15(g) (2015); Wis. Admin. Code § HA 3.05(3)(a) (February 2013); FWH 6.4.1.; *Income Maintenance Manual* 3.3.1. It is noted that petitioner's request for a Hearing was not received by the Division of Hearings and Appeals ["DHA"] until January 2015 -- more than 90-days after the July 22, 2014 letter notice notifying petitioner of the FS overpayment. However, petitioner requested a Hearing in writing soon in July 2014 after receiving that July 22nd letter notice but for unknown reasons that request was not received and when she became aware of this she made a second written request for a Hearing. Petitioner's testimony in this regard is credible and is supported by a *Case Comments* entry dated July 24, 2014. Therefore, petitioner's request for a Hearing will not be dismissed as untimely.

CONCLUSIONS OF LAW

For the reasons discussed above, the following Claim may not be established against petitioner for an alleged overpayment of FS: : Claim # [REDACTED] for the time period November 1, 2013 to May 31, 2014 in the total amount of \$2,291.00.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the County and that the County not establish against petitioner the alleged FS overpayment Claim listed in *Findings of Fact* #2, above, and, within 10 days of the date of this *Decision*, send a letter to petitioner stating that it has done so.

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 16th day of March, 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 March 16, 2015.

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