



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/163255

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 14, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Northern IM Consortium to recover FoodShare benefits (FS), a hearing was held on February 11, 2015, by telephone.

The issue for determination is whether petitioner's son was living with him in the summer and fall, 2013.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Beulah Garcia  
Northern IM Consortium  
10610 Main Street  
Hayward, WI 54843

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Lincoln County.
2. Petitioner applied for FS on July 19, 2013 for a household of him and his pre-school age son. Maximum FS were issued for the two-person household.
3. In October, 2013, the agency received information that the court placement order showed that petitioner had placement of his son only two days per week. The case was sent for investigation, but no investigation was done. The agency determined that petitioner's son should not have been on his FS case solely because of the court order.

4. By a notice dated October 22, 2014, the agency informed petitioner that he was overpaid \$729 in FS from July 19 through November 30, 2013 because he reported incorrect household members, claim no. [REDACTED].
5. Despite the court order, petitioner had more than 50% care and control of his son during the period in question.

### 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).

In this case the agency based the overpayment solely on the placement order. Petitioner testified that after the order was entered the child's mother allowed him to care for the child, and that is when he applied for FS. He provided a copy of a lease that included the child's name; however, even petitioner acknowledges that the child was out of the home as of October 12, 2013. Had he reported that move within 10 days, the change would have been made for December FS, so there still is no overpayment for November.

Petitioner's evidence also shows that the mother moved in with him at least temporarily in August, 2013, and petitioner did not report her move into the home. However, I will make no ruling on whether an overpayment occurred due to the failure to report the mother and her older children being in the home. In fact, it's likely that had petitioner reported them in the home the household would have been eligible for more, not less, FS. To make a ruling I would need more information on the mother's income during that period.

I conclude that this overpayment at issue in this case was entered incorrectly. Petitioner's testimony and the other evidence show sufficiently that the child was with him despite the placement order.

### CONCLUSIONS OF LAW

Petitioner was not overpaid FS because the evidence shows that his son was living with him from July through October, 2013 despite a placement order that called for placement with him just two nights per week.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to rescind FS claim no. [REDACTED], and to cease recovery of it. The agency shall do so within 10 days of this decision.

### **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 13th day of February, 2015

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\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 February 13, 2015.

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