FH
Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redact

DECISION

FOP/163259

PRELIMINARY RECITALS

Pursuant to a petition filed January 13, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on March 19, 2015. At the request of petitioner a Hearing scheduled for February 19, 2015 was rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following 2 closely related matters concerning the same petitioner: MOP-163260; and, CCO-163261.

The issue for determination is whether the following 4 Claims may be established against petitioner for overpayments of FS in the total amount of $12,456.00 covering the time period September 1, 2011 to April 30, 2014: Claim # Redact ($4,192.00); Claim # Redact ($1,192.00); Claim # Redact ($5,156.00); and, Claim # Redact ($1,916.00).

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Petitioner's Representative:

Attorney Redact
Law Office of Redact
Redact
Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
BY: Attorney Redact
Corporation Counsel
Office of the Corporation Counsel
County of La Crosse, Wisconsin
County Administrative Center
Room 2350
400 4th Street North
La Crosse, Wisconsin
54601-3200

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

FINDINGS OF FACT

1. Petitioner (CARES # Redact; 48 years old) is a resident of La Crosse County, Wisconsin.
2. PACU established the following 4 Claims against petitioner for overpayments of FS in the total amount of $12,456.00 covering the time period September 1, 2011 to April 30, 2014: Claim # Redact ($4,192.00); Claim # Redact ($1,192.00); Claim # Redact ($5,156.00); and, Claim # Redact ($1,916.00). Exhibit #11.
3. Petitioner is the father of minor child WMM (now 5 years old); WMM's mother is adult female NMK (34 years old). Exhibits #8, #9 & #B3.
4. Petitioner, WMM, and NMK all lived together during the time periods relevant to the FS overpayments listed in *Findings of Fact* #2, above. Exhibits #1, #2, #3, #4, #5, #6, #7, #8, #9 & #B3.
5. Petitioner had income during the time periods relevant to the FS overpayments listed in *Findings of Fact* #2, above, which put the FS household containing petitioner, WMM, and NMK over the FS program income limit. Exhibits #10 & #11.

DISCUSSION

The County argues that petitioner was over the FS income limit during the time periods in question because he was part of NMK's FS household and had income that put the household over the income limit.[1] Petitioner does not deny that he had income that would put the household over the FS program limit. However, he denies that he was part of the FS household.

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 County to show that petitioner lived with NMK and their

[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.

child during the time period in question. The County has more than satisfied this burden. Therefore, it must be concluded that petitioner lived with NMK and their child during the time period in question.

The County presented convincing evidence that establishes that petitioner lived with NMK and their child during the relevant time period. This included:

- an oral statement petitioner made to an investigator on August 12, 2014 that he and NMK "lived with each other on and off for a couple of years and then made it a full time commitment around June 2011 until they split up in April 2014";
- a *Voluntary Statement Form* dated August 13, 2014 and signed by petitioner stating: "I lived with [NMK] on and off since our child [WMM] was born on 09-22-09 and I have lived with [NMK] constantly for the last three years until 04-09-14 of which is the day I moved out . . . My best guess is that we lived together from June 2011 until April of 2014. Before that it was on and off two different times.";
- Circuit Court records[2] prepared by an attorney for petitioner and filed in May 2014 stating: "[Petitioner and NMK] have resided together in the same household for the majority of the time since the Court's February, 2010 Order until April 2014." "On or about April 5, 2014, [petitioner] moved out of the home he shared with [NMK] and obtained his own residence."
- property tax records; and,
- CCAP records.

Petitioner claims he did not live with NMK and their child during the time period of the overpayments. However, petitioner's testimony was not conclusive. He testified that "the majority of the time NMK and I lived together" but also testified that they had an "on again and off again" relationship and that "for days, weeks, months, I would not know here she was." Petitioner also points to the fact that some records, in particular CCAP records, give different addresses for him and NMK. He also points out that he and NMK were spending money on attorneys in a fight over custody. Finally, he testified that when he filled-out the *Voluntary Statement Form* he thought it would help him with his custody case. Given all of the other evidence in the record of this matter, petitioner's claim he did not live with NMK and their child 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, NMK, and their child all lived together.

CONCLUSIONS OF LAW

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

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

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[2] *In re Paternity of W.M.M.*, Case No.: 09-PA-194PJ (Wis. Cir. Court La Crosse County).

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 2nd day of April, 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 April 2, 2015.

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