



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/163613

PRELIMINARY RECITALS

Pursuant to a petition filed January 29, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on April 15, 2015, at Madison, Wisconsin. Petitioner failed to appear for a previously scheduled hearing, and the appeal was dismissed as abandoned. Petitioner subsequently submitted a timely request for rehearing, which was granted.

The issue for determination is whether the respondent correctly determined that petitioner is liable for an overpayment of FS benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.

2. Petitioner's mother, LA, married WA on December 22, 2012. LA reported her marriage to the respondent on January 11, 2013. Exhibit 4C.
3. On February 6, 2013, LA completed a telephone review, and petitioner was added to her FS household residence on [REDACTED]. WA was also included in her FS household. Exhibit 2.
4. LA reported to the respondent on April 2, 2013, that WA was no longer residing with her. Exhibit 2.
5. On October 10, 2014, the respondent received a tip that WA had been residing with LA. On that same date, WA contacted respondent and reported residing at LA's [REDACTED] residence since 2011. The respondent added WA to LA's FS household. Exhibit 2.
6. After obtaining WA's income information, the county informed petitioner by notice November 3, 2014, that he was liable for an FS overpayment in the amount of \$2,451.00, claim no. [REDACTED]. Exhibit 5C. The respondent prepared a FS overpayment worksheet calculating the overpaid monthly FS benefits between January, 2013 and October, 2014. Exhibit 5E.

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, § 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).

FS rules provide 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, § 3.3.1.2. Thus if a parent lives with his children, he must be included in the FS household.

WA and LA testified at hearing that they have had a tumultuous first few years of marriage. They stated that during the overpayment period they were separated, though LA conceded that WA would spend a couple of nights at her residence per week during the separation. WA testified that he would additionally stay with friends and in hotels. Unfortunately, WA and LA did not provide any corroboration of this testimony, either through testimony of WA's friends or hotel receipts.

The respondent presented documentation, which included (1) Facebook postings of LA referencing celebrating her 2013 wedding anniversary with WA and her 2014 birthday celebration at a hotel with WA; (2) [REDACTED] information referencing WA's [REDACTED] address; (3) email from [REDACTED] verifying that WA resided at a [REDACTED] address only between May, 2009 and October,

2011; and (4) employer and union verification forms referencing WA's [REDACTED] address. Exhibit 4. Clearly WA has been unhindered in reporting that he lives at the [REDACTED] address, and it is clear that he has remained involved in LA's life.

While this is a very close case, I conclude that the respondent correctly determined that WA should have been included on LA's case throughout the overpayment period. LA probably thought legitimately that her husband did not need to be on the case because she considered herself to be separated from him. However, the petitioner has not substantively rebutted the evidence provided by the respondent demonstrating that LA and WA have lived together, and thus both should have been on the case during the overpayment period. Nor has the petitioner established that he should not be liable. The petitioner has not established any error of the respondent in determining that he was an adult member of LA's FS household during the overpayment period.

CONCLUSIONS OF LAW

WA should have been included on his wife's FS case between January, 2013 and October, 2014, because he was living with his wife, LA, even though he and LA were ostensibly separated during this period; thus petitioner is liable for the FS overpayment as an adult member of LA's FS household during the overpayment period.

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 1st day of May, 2015.

\sPeter McCombs
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 May 1, 2015.

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