



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redact

DECISION

FOP/165790

PRELIMINARY RECITALS

Pursuant to a petition filed May 1, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on June 2, 2015. At petitioner's request a Hearing scheduled for May 21, 2015 was rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following 2 closely related matters: FOP-165788; and, MOP-165789.

The issue for determination is whether the following 2 Claims may be established against petitioner for overpayments of FS in the total amount of \$8,116.00 covering the time period September 21, 2012 to August 31, 2014:

- (I) Claim # Redact; September 21, 2012 to August 31, 2013; \$5,957.00; and,
(II) Claim # Redact; September 1, 2013 to August 31, 2014; \$2,159.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

BY: Redact, Overpayment Specialist
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

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

FINDINGS OF FACT

1. Petitioner (CARES # [Redact]) is a resident of Dane County, Wisconsin.
2. The County established the following 2 Claims against petitioner for overpayments of FS in the total amount of \$8,116.00 covering the time period September 21, 2012 to August 31, 2014:
 - (I) Claim # [Redact]; September 21, 2012 to August 31, 2013; \$5,957.00; and,
 - (II) Claim # [Redact]; September 1, 2013 to August 31, 2014; \$2,159.00.
 Exhibits A & L.
3. Petitioner is married to adult female MB; the date of their marriage was April 19, 2008; petitioner's wife received FS during the time periods of the overpayments listed in *Findings of Fact #2*, above.
4. Petitioner and his wife (MB) lived together in the same single family home during the time periods relevant to the FS overpayments listed in *Findings of Fact #2*, above. Exhibits A, B1, C, N & O.
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 of him and his wife over the FS program income limit. Exhibits A, D, D1, E, F1, G1 & M.

DISCUSSION

The County argues that petitioner was over the FS income limit during the time periods in question because he was part of his wife'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. Spouses who live together must be considered as customarily purchasing food and preparing meals together even if they do not do so, and thus must be included in the same household. 7 C.F.R. §§ 273.1(b)(1)(i) (2015); FSWH 3.3.1.3.1.

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 his wife during the time periods in question. The County has more than satisfied this burden. Therefore, it must be

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.

concluded that petitioner lived with his wife during the time periods in question and, therefore, was part of his wife's FS household.

The County presented convincing evidence. This included leases signed jointly by petitioner and his wife, statements by their landlord, an admission by both petitioner and his wife that they lived in the same single family home and that petitioner paid all the bills, and driver's license records. Exhibits A, C & N.

Petitioner's wife testified that although she and petitioner lived in the same home they did not get along, were separated, and that she lived upstairs and he lived downstairs. She also testified that they went through a period of time when petitioner was not living in the home (although he still paid the bills) -- but she was unable to provide an alternative address where petitioner did live. Given all of the other evidence in the record of this matter, petitioner's claim that he did not live with his wife during the time period of the overpayments is simply not credible. Further, for purposes of FS they must be considered as living together if they lived in the same single family home (even if, as petitioner's wife claims, they did not get along, she lived upstairs, and he lived downstairs).

Finally, petitioner testified that he did not know anything about the FS that his wife was receiving. This might be the case -- but the law provides that a person can be held liable for an FS overpayment and made to repay it even though the overpayment may not have been their fault. All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2015); FSWH 7.3.1.1 & 7.3.1.2. Furthermore, the law also 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, FSWH 7.3.1.2. Thus, petitioner can be held liable for the overpayments and made to repay them.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner and his wife 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.

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 15th day of June, 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 June 15, 2015.

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