



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

Redact

Redact

DECISION

FOP/166152

PRELIMINARY RECITALS

Pursuant to a petition filed May 21, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Rock County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on June 11, 2015, by telephone.

The issue for determination is whether petitioner was overpaid FS by failing to report household members.

PARTIES IN INTEREST:

Petitioner:

Redact

Redact

Redact

Respondent:

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

By: Redact, Laura Middleton
Rock County Dept. of Social Services
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a 21-year-old resident of Rock County.
2. Petitioner had an ongoing FS case for a one-person household in 2013. On January 24, 2014, she reported a new address on Redact, and that she was pregnant. She did not report any other household members. When she filed a six-month report form in April, 2014 she did not report other household members, and she did not report being homeless. Her baby was added to her FS case beginning August 1, 2014.

3. On October 6, 2014 petitioner had a review and reported living at the [Redact] address with her mother, step-father, and siblings. Because petitioner was under age 22 her family members would have been mandatory members of her FS household.
4. The county determined that petitioner was overpaid \$1,618 from May 1 through October 31, 2014. The county used previously reported income for the parents because it was less than state wage matches showed for 2014 and even the lower income put the household over the FS limit. Petitioner was notified about the overpayment, claim no. [Redact], by a letter dated May 18, 2015.

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).

The federal FS regulations define FS household composition as follows:

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. 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). FS rules provide further 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, Appendix 3.3.1.2.

Under FS rules when petitioner moved in with her mother and step-father, she no longer could have a separate FS household because she was under age 22. Her parents' income on its own was high enough that the household, including petitioner and later her baby, would have been over the FS income limit, and thus any FS issued to petitioner were overpaid.

Petitioner and her mother testified that petitioner did not really move in full-time until after the baby was born in July, 2014. Nothing in the record supports that testimony, however. Petitioner reported moving into the Redact address in January, 2014. She did not report that it was a mailing address only, and she did not report being homeless or having a different residential address at any time until after receiving the overpayment notice. During the October 6, 2014 phone interview when petitioner first mentioned living with her mother, she made no claim to living elsewhere or being homeless prior to the baby's birth; the case note says that petitioner stated she had "been living with her mom since she found out that she was pregnant and no one said anything before."

I conclude that the overpayment was determined correctly. Under FS rules petitioner was not eligible to receive FS on her own when she moved back in with her mother and step-father, and I cannot conclude that she was outside the home during the period in question based upon the historical record of the case.

CONCLUSIONS OF LAW

The county correctly determined an FS overpayment resulting from petitioner failing to report her household accurately after moving back in with her mother and step-father.

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 17th day of June, 2015

\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 June 17, 2015.

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