



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION



PRELIMINARY RECITALS

Pursuant to a petition filed July 28, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Portage County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on November 12, 2015, by telephone. The hearing was a rehearing granted by the Division of Hearings and Appeals on October 21, 2015.

The issue for determination is whether the father of petitioner’s youngest child lived in petitioner’s household during the period June 1, 2014 through July 31, 2015.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: 
Portage County Dept. of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Portage County.
2. From June 1, 2014 through July 31, 2015 petitioner received FS for a four-person household that included her, her two teenage children, and her youngest son by a different father. T.L. is the youngest son’s father, and he was listed as an absent parent for FS purposes. Petitioner also received housing assistance for the four-person household.

- [REDACTED]
3. In May, 2015 the agency received a referral alleging that T.L. actually lived in the home. The county asked investigator [REDACTED] to look into the referral.
 4. Mr. [REDACTED] received differing information. Petitioner's teenage children stated that T.L. did not live in the home, although her daughter initially said that he lived there before being corrected by her brother. Petitioner acknowledged that T.L. spent much time at the home seeing his son, who is autistic. T.L.'s mother stated that T.L. lived with her. A neighbor stated that he lived in the home although she later disputed exactly what she said. The housing authority representative reported receiving complaints about T.L. being in the home, but the agency had no firm proof.
 5. Based upon Mr. [REDACTED]'s report the county determined that he lived with petitioner since she moved to that residence in 2014. Using T.L.'s state wage records the county determined the household would have been ineligible for FS during the entire period of June 1, 2014 through July 31, 2015. By notices dated July 20, 2015, the county informed petitioner that she was overpaid a total of \$6,460 in FS, claim nos. [REDACTED]

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. If T.L. lived with petitioner his income had to be included because he is the father of a minor child in the household.

[REDACTED]

The issue is whether T.L. lived in the household. The FS rules do not define specifically the meaning of “living” in the household. Thus it comes down to a common sense review of the facts. Clients often have the belief that simply saying that the person lives elsewhere is enough, but the issue revolves around how much the person is in the home and how much he interacts with the home. That the person has no alternative, verifiable address makes the determination difficult; in virtually every disputed case the person allegedly lives with a relative or friend and has no lease or other indicia that could verify a separate residence. Also in virtually every case the person spends a lot of time in the household; at best it is foolhardy for a welfare recipient whose benefits depend on the person being absent to allow the person to be in her home with such regularity (and often allowing the person to use the residence as his mailing address), but at worst it is a clear sign of fraud.

That said, I am going to reverse the overpayment in this case. While petitioner’s situation is highly suspicious, the only proof I have that T.L. lived in the home are the hearsay statements of petitioner’s daughter and neighbor. Both statements later were retracted (with the neighbor’s retraction also being via hearsay). "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted." Wis. Stat., §908.02(3). The problem I have is that the only evidence that would prove T.L.’s residence is hearsay, i.e. the statements by petitioner’s daughter and the neighbor. Mr. [REDACTED] is a trained investigator and his report should be given some weight, but there is nothing else tying T.L. to petitioner’s address. T.L. did not use the address for his personal business, and he was not present when Mr. [REDACTED] visited (it is astounding how often the alleged absent parent is present when the investigator visits). Petitioner did not err by telling others he lived there (again, it is astounding how often the recipient tells others about the absent person’s presence, often in Facebook posts).

I conclude that the proof that T.L. lived with petitioner’s FS household in 2014 and 2015 is insufficient. The overpayment claims thus must be rescinded.

CONCLUSIONS OF LAW

The evidence is insufficient to show that the father of petitioner’s youngest son lived in the household during the period June 1, 2014 through July 31, 2015, and thus the overpayments established during that period must be rescinded.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to rescind overpayment claim nos. 8900439738 and 9900439739 and to cease recovery of them, 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.

[REDACTED]

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.

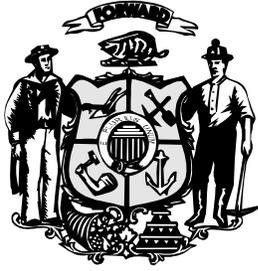
APPEAL TO COURT

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 November, 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 November 17, 2015.

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