



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/168093

PRELIMINARY RECITALS

Pursuant to a petition filed August 19, 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 September 30, 2015, by telephone.

The issue for determination is whether petitioner was overpaid FS because she reported being separated from her husband when they actually were not separated.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:   
Rock County Dept. of Social Services  
P.O. Box 1649  
 WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of . She resided in Rock County until October 1, 2015.
2. Petitioner applied for FS for herself and her teenage son in February, 2013. She reported that she was separated from her husband, but that her husband continued to pay the rent and utilities. Petitioner was granted maximum FS for a two-person household based upon zero income.

3. When she applied petitioner resided on [REDACTED] in [REDACTED]. In August, 2013 she reported that she had moved to [REDACTED], and that her husband continued to pay the rent and utilities.
4. Petitioner and her husband both signed the lease for the [REDACTED]. The landlord thought they both lived in there. Petitioner's husband did not rent another apartment, and he used petitioner's address for mail and for voting.
5. Petitioner continued to report to the FS agency that she and her husband were separated, and she continued to receive maximum FS based upon zero income.
6. In early 2015 the FS agency received an alert that petitioner might not be reporting her household accurately. An investigation ensued.
7. On February 17, 2015, and investigator went to the [REDACTED]. Petitioner's husband answered the door. After conversations with petitioner and her husband the investigator reported that petitioner's husband was in the home and that they had been separated in only the past three months.
8. Petitioner also had an FS review on February 17, 2015. She reported then that she and her husband were trying to work things out but were still separated. On February 20, 2015, petitioner reported that her husband had moved back in, and that he had been laid off from his job.
9. The FS agency obtained petitioner's husband's income record. Had he been included in the household, the household would have been ineligible for FS during the entire period from February, 2013 through November, 2014 because his income would have put it over the FS limit.
10. By notices dated May 21, 2015, the agency informed petitioner and her husband that they were overpaid a total of \$7,794 in FS from February 4, 2013 through November 30, 2014, claim nos. [REDACTED] and [REDACTED]. The claim ended with November 30, 2014 based upon the couple's statements to the investigator that they had been separated for three months.

### DISCUSSION

As a first point I note that the descriptions of the people involved in this case are somewhat stilted. I use generic language like "petitioner," "the landlord," and "the affiant" throughout the decision. The Division of Hearings and Appeals scans all decisions and makes them available for public viewing on the internet. Names and addresses on page one are deleted using computer software, but the software does not delete names in other sections. I use generic language in the decision for confidentiality purposes.

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.

There is no definition in the code of the meaning of “living with.” Furthermore, in my 25 years in this position I have not found an appellate decision that defines the phrase. Basically the determination revolves around a common sense interpretation of whether a person is living in the FS household.

The problem for petitioner’s side is that there is no evidence that the couple actually was separated except the couple’s own statements. Even after the beginning of the alleged separation petitioner’s husband continued to use her address, and he even signed on the lease as a resident at the [REDACTED]. He was the person who always dealt with the landlord and paid the bills. He answered the door when the investigator knocked.

Petitioner provided an affidavit from her husband’s friend and co-worker who allowed her husband to use a spare room at his house for free. The affidavit, however, actually provides little assistance. First, as I pointed out during the hearing, petitioner and her husband claim that they separated in early 2013, when they were living in [REDACTED]. Yet the affiant says that he has known the couple to live at the [REDACTED], and petitioner did not move to the [REDACTED] until after the alleged separation. Furthermore, the affiant says that he and petitioner’s husband rarely saw each other at the affiant’s home, so the affiant really has no idea how often petitioner’s husband actually stayed at his place.

Other than that, both petitioner and her husband admit that few people knew about the separation. They said that they kept the separation quiet because of petitioner’s husband’s position in the community. After the hearing I thought about that claim, and it really is rather bizarre since they apparently had no qualms about their son’s school administrators being aware that he and his mother were on welfare (petitioner applied for the free lunch program at their son’s school, and the eligibility criteria include being on a public assistance program).

The meeting with the investigator also involves a huge question. The investigator testified that both petitioner’s husband, and then later petitioner, told him that they had been separated three months as of February, 2015. They testified that the investigator misconstrued the conversation because it was in the prior three months that they were trying to work out their differences. I could understand the disconnect if the investigator had gleaned the information while talking to both of them, but he testified that first petitioner’s husband said they were separated three months, and then later, when petitioner joined the

meeting, she also said they were separated three months. Petitioner noted that it would have made no sense for them to say that to the investigator, except that it would make sense if they thought the investigator was from the child support agency and they were worried about a retroactive child support order. I admit that is speculation on my part but there is a huge difference between saying “we have been separated three months” and “we have been separated two years but have been trying to reconcile for three months,” making the accuracy of the reporting difficult to discern.

In the end, I conclude that the overpayment was determined correctly. I absolutely believe that the couple had marital trouble and that there may have been times when petitioner’s husband did not come home at night. However, if a person signs up for public assistance alleging that her husband does not live with her, then he actually better not live with her. I do not believe that petitioner’s husband actually was out of the household or considered himself to be out of the household, even if he sometimes stayed elsewhere. He signed the lease; he paid the rent; he met with the landlord when necessary; he even admitted that he regularly ate with his son at the residence. At worst this couple deliberately perpetrated a fraud to obtain public assistance. At best they naively sought public assistance because in their minds they were separated, even though petitioner’s husband still was regularly and vitally involved in the household. I lean toward the latter, but either way the overpayment occurred.

I have conducted well over one hundred hearings where the issue is whether a family member, almost always the father, actually was in the home when reported to be absent. In my experience there are a number of indications that a couple who claimed to be separated actually remained together. One is that the father continued to use the mother’s address, even after she moved to a different address. Check. Another is that the father had no separate, verifiable address, but instead was alleged to stay with friends or relatives. Check. A third is that neighbors and/or the landlord believed that the father lived in the home. Check. A fourth is that the father was at the residence when the investigator appeared. Check. A fifth is that, after realizing that she was being investigated, the mother reported to the agency that the couple reconciled and the father moved back in. Check. A sixth is that the father lost his source of income, and then the couple reconciled. Check (although in this case the investigation and the lost job were more or less concurrent). A seventh was that the mother obfuscated with the child support agency about the father’s whereabouts. Although not a sure check, there is evidence that it was the child support agency that initially questioned the living situation here. Petitioner and her husband fit the profile perfectly.

If anything, I am puzzled that the county worker accepted the original 2013 claim that, although the couple was separated, petitioner’s husband still paid for everything. One would think that claim would have warranted a front end investigation about the living situation.

### CONCLUSIONS OF LAW

The county correctly determined that petitioner was overpaid \$7,794 in FS in 2013 and 2014 because she claimed that her husband was out of the household, but he actually remained a household member.

**THEREFORE, it is**

**ORDERED**

That the petition for review 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 the Rock County Circuit Court. 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 6th day of October, 2015

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on October 6, 2015.

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