



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/169649

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on November 17, 2015, at Janesville, Wisconsin.

The issue for determination is whether the agency erred in determining a FS overpayment of \$884.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Rock County.
2. Petitioner had a FS case for herself and children [Redacted] and [Redacted].
3. [Redacted] was an adult living in the home.

4. In August 2014, █████ █████ informed the agency that her son █████ would be going to college.
5. In 9/3/14, █████ was removed from the FS group.
6. █████ █████ called back the agency on 9/19/14 and informed the agency that █████ was in a 2-year program that would lead to in-demand employment. The agency placed █████ back in the FS group.
7. In March 2015, █████ completed his own FS application and interview and the agency learned that █████ was actually attending college in the state of Illinois and lived at the college in a dormitory.
8. █████ was only in the home for some weekends from October 2014 through April 2015.

### DISCUSSION

Under FS program rules, a student who leaves home to attend school may be temporarily absent from the home but is not eligible for FS on the basis of temporary absence:

#### 3.2.1.2 Temporary Absence

Include in the household an individual temporarily absent from the household when the expected absence is no longer than 2 full consecutive calendar months past the month of departure. Some examples are absence due to illness or hospitalization, employment, and visits.

To be considered temporarily absent, one must meet ALL of the following conditions:

1. The individual must have resided with the food unit immediately before the absence,
2. The individual intends to return to the home, and the food unit must maintain the home for him/her,
3. If the absent person is a child, the caregiver of the absent child is responsible for the child's care and control when the child returns to the home, and
4. If the absent person is an [adult](#) , the adult must still be responsible for care and control of the child during their absence.

**Attending school - Persons temporarily absent to attend a school is not a reason to remain included in the food unit.**

Foodshare Wisconsin Handbook at § 3.2.1.2 (emphasis added). This rule controls the situation that occurred here and █████ was not eligible for FS as part of petitioner's household.

█████ █████ at hearing was more concerned that she would be determined as having done something wrong. She seemed frustrated that the agency added █████ back into the FS case even though she had provided documentation that indicated that he lived in a dormitory. This action is not about culpability. The only question is whether the household received FS to which it was not entitled. It did. The amount must be repaid.

Furthermore, █████ is equally liable as he was an adult in the group during the overpayment. All adult members of the household are liable for an overpayment:

All adult [a person who is 18 years old or older] or emancipated minor [A married, widowed or divorced person who is at least 16 years old, a minor who has given birth, a minor emancipated by court order, a minor emancipated by parental consent or a minor

living on his or her own who is not supported by parents] food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

*FoodShare Eligibility Handbook, Appendix 7.3.1.2; see also 7 C.F.R. §273.18(a)(4).*

### **CONCLUSIONS OF LAW**

The agency did not err in determining the overpayment.

**THEREFORE, it is** **ORDERED**

That this matter is 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 7th day of December, 2015

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\sJohn P. Tedesco  
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 December 7, 2015.

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