



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

FOP/171660

PRELIMINARY RECITALS

Pursuant to a petition filed January 25, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Marquette County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone from Madison, Wisconsin on February 23, 2016. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: MOP-171661.

The issue for determination is whether it was correct to establish the following 2 Claims against petitioner for overpayments of FS for the time period September 1, 2014 to December 31, 2015 in the total amount of \$3,797.00:

- (I) Claim Number [redacted]; September 1, 2014 to August 31, 2015; \$2,565.00; and,
(II) Claim Number [redacted]; September 1, 2015 to December 31, 2015; \$1,232.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

BY: [redacted], ESS Worker
Marquette County Department of Human Services
480 Underwood Avenue
PO Box 99
Montello, WI 53949-0099

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]; 43 years old) is a resident of Marquette County, Wisconsin.
2. The County established the following 2 Claims against petitioner for overpayments of FS for the time period September 1, 2014 to December 31, 2015 in the total amount of \$3,797.00:
  - (I) Claim Number [REDACTED]; September 1, 2014 to August 31, 2015; \$2,565.00; and,
  - (II) Claim Number [REDACTED]; September 1, 2015 to December 31, 2015; \$1,232.00.
3. During the time period of the FS overpayments listed in *Finding of Fact #2*, above, petitioner's 2 children (son "KS" born in 1998; and, daughter "SS" born in 2001) were included in petitioner's FS household and petitioner received FS for them.
4. During the time period of the FS overpayments listed in *Finding of Fact #2*, above, petitioner and her 2 children (KS and SS) did not live together in the same household.

**DISCUSSION**

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) (2016); *FoodShare Wisconsin Handbook* ["FSWH"] 3.3.1.1.

The overpayments in this matter arose from the fact that petitioner's 2 children were included in her FS household when they did not live with petitioner. This matter must be decided by a preponderance of the credible evidence in the record of this matter. Wis. Admin. Code § HA 3.09(4) (February 2013).

The preponderance of the credible evidence in the record of this matter is that petitioner and her 2 children did not live together in the same household during the time period in question. This includes testimony by petitioner's sister (who states that petitioner asked her to lie), statements by 3 of petitioner's neighbors, and school records.

There is a statement by petitioner that her children lived with her. Petitioner testified that her children did stay at other places at times and that KS did not move out until his 18<sup>th</sup> birthday. Petitioner also testified that she has been mentally unstable for the last 2 years. Give the disjointed nature of her testimony, her demeanor while testifying, her admitted mental instability, and the other evidence in the record of this matter petitioner's testimony is not credible.

There is a statement by KS that he lived with petitioner and visited his girlfriend. There is a statement by another of petitioner's daughters ["KMS" born 1996] that KS and SS lived with petitioner. Finally, there is an initial statement from petitioner's landlord that KS and SS lived with petitioner -- but the landlord later stated that she cannot say for sure whether KS and SS lived with petitioner. KS, SS, KMS and the landlord did not testify. Their statements are outweighed by the other credible evidence in the record of this matter

**CONCLUSIONS OF LAW**

For the reasons discussed above, it was correct to establish the following 2 Claims against petitioner for overpayments of FS for the time period September 1, 2014 to December 31, 2015 in the total amount of \$3,797.00:

- (I) Claim Number [REDACTED]; September 1, 2014 to August 31, 2015; \$2,565.00; and,  
 (II) Claim Number [REDACTED]; September 1, 2015 to December 31, 2015; \$1,232.00.

**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 17th day of March, 2016

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\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 March 17, 2016.

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