



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

FOP/171851

PRELIMINARY RECITALS

Pursuant to a petition filed February 2, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Jefferson County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone from Madison, Wisconsin February 23, 2016.

The issue for determination is whether the following 3 Claims may be established against petitioner for overpayments of FS in the total amount of \$12,705.00 covering the time period April 1, 2013 to December 31, 2015:

- (I) Claim # [redacted]; \$4,276.00;
(II) Claim # [redacted]; \$4,964.00; and,
(III) Claim # [redacted]; \$3,465.00.

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
Jefferson County Department of Human Services
Workforce Development Center
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Jefferson County, Wisconsin.
2. The County established the following 3 Claims against petitioner for overpayments of FS in the total amount of \$12,705.00 covering the time period April 1, 2013 to December 31, 2015:
 - (I) Claim # [REDACTED]; \$4,276.00;
 - (II) Claim # [REDACTED]; \$4,964.00; and,
 - (III) Claim # [REDACTED]; \$3,465.00.
3. Petitioner's reported FS household consists of petitioner, petitioner's husband, and their children.
4. Petitioner's reported FS household lived together with petitioner's parents during the time periods relevant to the FS overpayments listed in *Findings of Fact #2*, above and they all customarily purchased and prepared meals together for consumption at home; they all lived in a single family home with 4 bedrooms, 2 bathrooms, and only 1 kitchen; none of this was reported.
5. Petitioner's parents had income during the time periods relevant to the FS overpayments listed in *Findings of Fact #2*, above, which caused the entire FS household to not be eligible for FS during the time period in question.

DISCUSSION

The County argues that petitioner was over the FS income limit during the time periods in question because her parents were part of her FS household and had income that put the entire household over the income limit.¹

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) (2015); *FoodShare Wisconsin Handbook* ["FSWH"] 3.3.1.1.

This matter must be decided based on a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (September 2001). The preponderance of the credible evidence is that petitioner's reported FS household and petitioner's parents all lived together and customarily purchased food and prepared meals together for home consumption during the time periods in question. This made them all part of the same FS household.

Petitioner acknowledges that she, her husband, and her children lived with her parents during the time periods in question. However, she, her husband, and her father all testified that petitioner's family and did not customarily purchase food and prepare meals together with petitioner's parents for home consumption. This is not credible. First, it is directly contrary to what petitioner's father told an investigator on November 17, 2015 (at the February 23, 2016 Hearing petitioner's father testified that the

¹ For purposes of FS, income includes all household income from wherever source, excluding only certain specific items not relevant here. 7 C.F.R. §§ 273.9(b) & (c) (2015); *FoodShare Wisconsin Handbook* ["FSWH"] 4.3.1. Earned income of any household member age 18 years old or older is to be included in the FS household income. 7 C.F.R. § 273.9(c)7. (2015); FSWH, 4.3.2.2.3.

investigator got everything confused and that he and his wife eat out all the time). Second, they all lived in a single family home with 4 bedrooms, 2 bathrooms, and only 1 kitchen.

CONCLUSIONS OF LAW

For the reasons discussed above, the following 3 Claims may be established against petitioner for overpayments of FS in the total amount of \$12,705.00 covering the time period April 1, 2013 to December 31, 2015:

- (I) Claim # [REDACTED]; \$4,276.00;
- (II) Claim # [REDACTED]; \$4,964.00; and,
- (III) Claim # [REDACTED]; \$3,465.00.

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 25th day of March, 2016

\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 25, 2016.

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