



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/172818

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 16, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by the Marathon County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on May 19, 2016, at Wausau, Wisconsin, with the judge appearing by telephone. A hearing set for April 13, 2016 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner was overpaid FS after failing to report household members.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED]  
Marathon County Dept. of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner resides with her husband and two children ages 21 and 17. Also in the home are their older adult son, his wife, and their children. Their older son's family received FS at this address from 2012 through August, 2014; they reported that they purchased and prepared meals

separately from petitioner, and thus petitioner and other family members were not in their son's FS unit.

3. On September 29, 2014, petitioner applied for FS. She reported that the household consisted of herself and one child. She did not mention her older son and his family on the application. FS were opened for the two-person household at \$357 per month.
4. In March, 2015 FS were reduced to \$16. In June, 2015 FS increased to \$69. In August, 2015 FS increased to \$106. In September, 2015 petitioner's other younger son was added back to the FS household, and FS increased to \$161. FS were reduced to \$96 in December, 2015, and then to \$85 in January, 2016.
5. In early 2016 the county discovered that petitioner's husband as well as her older adult son and his family lived in the household. An investigator went to the home on February 4, 2016. Petitioner's older son spoke to the investigator and said that the entire family eats together, and that he and his wife provide the majority of the food.
6. Petitioner's son and his wife both are employed. If they and their children were added to petitioner's FS household, the entire household would have been ineligible for FS during the entire period September, 2014 through February, 2016. FS closed effective March 1, 2016 because petitioner's son's and his wife's income put the household over the FS income limit.
7. By notices dated March 14, 2016, the county informed petitioner that she was overpaid a total of \$2,614 in FS from September 29, 2014 through February 29, 2016, claim nos. [REDACTED]. [REDACTED] Petitioner's son and his wife were listed as liable parties.

### 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. According to the FS Handbook provision liable parties include adults who should have been included in the household during the overpayment period.

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). See also the FS Handbook, Appendix 3.3.1.

When a person applies for FS, she must report all household members. Handbook, App. 3.3.1.1. Composition of the FS household then is determined and verified. Handbook, App. 1.2.3.7 and 2.1.3.2. If it is reported that household members do not share food, the person must sign an affidavit attesting that they do not share food.

At the hearing petitioner's son and husband testified that they do not purchase and prepare meals together. Petitioner's son admitted that he told the investigator that the family does so, but he testified that he really did not know the food situation, that others in the household are responsible for purchasing and preparing meals. He testified that he comes home from work and the food is there, ready to eat. The problem is that even if I accept petitioner's son's testimony on its face, it still sounds like the family eats together. He did not say that they sit apart and eat entirely different meals.

The bigger problem for petitioner is that the FS household is supposed to be determined at the time of application or when household members are added. When petitioner applied for FS in September, 2014, she did not report her son and his family in the household, and thus the county could not verify whether the members purchased and prepared meals separately. To come in now and say that although petitioner did not report her household accurately, you should believe us when we say that we do not eat together is a stretch. Furthermore, the FS rules requiring verification of the food unit at application imply that the household composition is determined for future months, not for past months. Finally, petitioner's credibility is hurt further by her failure to report the return of her husband to the household.

I conclude that petitioner cannot claim now that she purchased and prepared meals separately from household members she failed to report when she applied. The time to make that determination is at the application, not after the failure to report is discovered. Furthermore, even if the determination could be made now, petitioner has not convinced me that the family members actually purchase and prepare meals separately. I note that petitioner did not dispute that her son's and daughter-in-law's income would have put the household over the FS income limit. I conclude, therefore, that the county correctly determined the overpayment in this case.

### CONCLUSIONS OF LAW

The county correctly determined an FS overpayment because petitioner failed to report household members whose income would have caused FS to be denied.

**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 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 24th day of May, 2016

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\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 May 24, 2016.

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