



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/174054

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 3, 2016, 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 June 22, 2016, at Janesville, Wisconsin, with the judge appearing by telephone. A hearing set for May 25, 2016 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner was overpaid FS because she failed to report accurate 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]  
Rock County Dept. of Social Services  
P.O. Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner applied for FS on August 27, 2015. She reported a household of herself and her two children. Petitioner was granted \$389 FS for the month of September.

3. In mid-September petitioner reported that she would be returning to work, and she requested child care assistance. FS ended effective October 1 because petitioner's anticipated income would be over the limit.
4. On October 19, 2015 the county child support agency notified the economic support worker that the father of petitioner's children was reported to be living with petitioner. The county then started an investigation of the household.
5. On November 11 petitioner provided a note signed by her and the father saying that he does not live with her. On December 1 the investigation report was filed; it concluded that the father lived in the household continuously.
6. By a notice dated March 18, 2016 the county informed petitioner that she was overpaid \$389 FS in September because she reported inaccurate household members, claim no. [REDACTED]. The overpayment was determined by adding the father and his income from September and determining that the household income would have been over the FS limit.

### 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.

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). Under FS rules a parent must be included in an FS household with his minor children if they live together, so if petitioner's boyfriend was in the household he and his income would be part of the FS unit. See 7 C.F.R. §273.1(b)(1); FS Handbook, Appendix 3.3.1.2.

Petitioner's boyfriend was included on her lease and he reported he lived with her to the child support agency. Petitioner testified that after the second child was born they experienced a rough patch and in August he moved out to, she guessed, his mother's home. Then in November things smoothed out and he moved back in, which is why she let the child care case close.

I could potentially believe petitioner's testimony except that it does not pass the "smell test." It simply is too incredible that they should have this difficulty immediately after their second child was born when petitioner was off work on maternity leave. Her neighbor was unaware that her boyfriend has moved out, which suggests that he still came and went as usual. Petitioner admitted that he spent substantial time at the household even after the alleged break-up. Most troubling to me is that petitioner testified that he moved back in November and then she let the child care case close. However, the record shows that on November 11 she gave the county a letter insisting that he did not live with her. She did not report that he moved back at any time. Child care closed because the investigation report was filed, not because petitioner reported him back in the home.

At worst petitioner and her boyfriend decided to supplement their income by reporting him out of the household when he was not. At best petitioner's boyfriend temporarily moved out but still remained active in the household. Under those circumstances his contribution should have been reported to the agency. I conclude, therefore, that the county appropriately seeks recovery of the September, 2015 FS because the father of petitioner's children should have been reported in the household.

**CONCLUSIONS OF LAW**

The county correctly determined an FS overpayment because petitioner did not report her household accurately when she applied for the benefits.

**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 5th day of July, 2016

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



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 5, 2016.

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