



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/174218

PRELIMINARY RECITALS

Pursuant to a petition filed May 10, 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 2, 2016, at Janesville, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether petitioner is liable for an FS overpayment issued to the father of her children.

PARTIES IN INTEREST:

Petitioner:



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. In 2015 petitioner resided with her parents and her two children. She began to receive child care assistance in July, 2015, based upon a three-person household. She did not receive FS.
3. On June 15, 2015, the father of petitioner's children (J.J.) applied for FS using petitioner's address. He reported that he lived alone. In September, 2015 the child support agency informed

the economic support agency that J.J. reported that he lived with petitioner. The county then requested an investigation.

4. Investigator [REDACTED] spoke with three neighbors who reported that they believed that a black guy lived in the home but that he was "in and out." Mr. [REDACTED] did not speak with petitioner or her parents. One neighbor reported that the black man had left for good in September after a disturbance; that date corresponded approximately with J.J. reporting a new address to the Rock County Circuit Court on September 10, 2015.
5. Based upon the investigation and J.J.'s self-reporting, the county determined that J.J. lived with petitioner in the summer, 2015 through September 10, 2015. It determined that all FS issued to J.J. were an overpayment because petitioner should have been included on his FS case. By a notice dated April 12, 2016, the county informed J.J. that he was overpaid \$842 in FS from June 16 through September 30, 2015, claim no. [REDACTED]. Petitioner was listed as a liable party and was sent a copy of the notice.

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).

In concurrent case no. CCO-174219 I conclude that the county has not provided sufficient evidence to prove that J.J. lived in petitioner's residence. Because of that conclusion, I also conclude that petitioner cannot be considered a liable party on the FS overpayment. If she was not part of J.J.'s household, she cannot be liable for a claim against him.

As far as I know, J.J. has not appealed the overpayment (I did a name search in the Division of Hearings and Appeals data base and nobody by that name has filed an appeal). I question whether he received the notice of the overpayment since it was sent to petitioner's parents' address and he has not used that address since September, 2015. I also wonder about the basis for the claim. Failure to report accurate household members is not a basis alone to recover all FS issued; the agency still needs to determine if the correct household would have been eligible for any or all of the FS issued. While the claim against J.J. is not before me, I would suggest that the county look at it again. Since I am finding that there is insufficient evidence that J.J. lived with petitioner, it would follow that the claim against him might be erroneous as well.

CONCLUSIONS OF LAW

Petitioner cannot be liable for an FS overpayment issued to the father of her children because there is insufficient evidence that they lived together during the overpayment period.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to remove petitioner as a liable party for claim no. [REDACTED], and to cease recovery efforts against her. The county shall do so within 10 days of this decision.

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 9th day of June, 2016

\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 June 9, 2016.

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