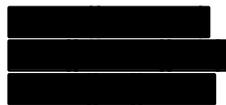




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOP - 174598

PRELIMINARY RECITALS

On May 24, 2016, the above petitioner filed a hearing request under Wis. Admin. Code §HA 3.03, to challenge a decision by the Rock Cty. Dept. of Social Services regarding FoodShare benefits (FS). The hearing was held on June 16, 2016, by telephone.

The issue for determination is whether the respondent correctly determined that petitioner was overpaid FS benefits in April and May of 2016.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI53703

By: [Redacted]
Rock Cty. Dept. of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Rock County.

2. Petitioner received FS for herself and two children in April and May of 2016. Prior to this, petitioner received FS for herself, her two children and [REDACTED] the father of her son. In March of 2016, the petitioner completed a telephone renewal and reported [REDACTED] out of her home.
3. The respondent had O'Brien and Associates conduct an investigation into whether [REDACTED] was no longer in the household. After the investigation the county concluded that [REDACTED] lived in the residence, and had not moved from the residence. After obtaining his income information, the county informed petitioner by notice dated May 16, 2016, that she was overpaid \$908.00 in FS from April 1, 2016 – May 31, 2016, claim no. [REDACTED].
4. Petitioner resides in and owns her home located at [REDACTED].
5. [REDACTED], throughout this period, consistently spent time at the petitioner's home. He gave that address during a Rock County court proceeding on April 2, 2014. That address of record had not changed, and that court matter was still pending as of April, 2016.
6. Neighbors believe that petitioner and [REDACTED] have lived together at her address for several years.

### 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).

FS rules provide as follows:

The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

- (i) Spouses;
- (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and
- (iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent.

7 C.F.R. §273.1(b)(1); see also FS Handbook, Appendix 3.3.1.2. Thus if a parent lives with his children, he must be included in the FS household. Important for this case is that the issue is not the relationship between the parents, but the relationship between parent and children.

Petitioner testified that [REDACTED] was not in her home in April or most of May; she stated that he returned to the home at some point in May after having left the home in late 2015 following an argument. She conceded that he was at the home regularly to see his son. The investigation by O'Brien and Associates found that [REDACTED] continued to use petitioner's address during the time period at issue here. Clearly petitioner's ex-husband has been unhindered in reporting that he lives at the house, and it is clear that he is actively involved with his son on a regular basis. Still, petitioner testified that she told him to change

his address, but she stated that he did not have a permanent address while allegedly living elsewhere; she reported that he resided for a time with a cousin and with his sister.

The respondent also presented testimony of petitioner's neighbor who reported that [REDACTED] was at petitioner's home every day, which corroborated the O'Brien and Associates report. I conclude that the county correctly determined that [REDACTED] should have been included on her case in April and May of 2016. I do not doubt the sincerity of petitioner's testimony regarding the unsettled nature of her relationship with [REDACTED] in early 2016, but the respondent has presented substantial evidence that the petitioner has not been able to effectively rebut.

### CONCLUSIONS OF LAW

Petitioner's ex-husband should have been included on her FS case in April and May of 2016, because he essentially was living with the family, and thus petitioner was overpaid FS because his income was not budgeted for FS purposes.

**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**

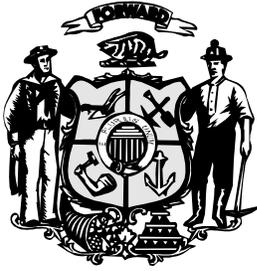
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 18th day of July, 2016

\s \_\_\_\_\_  
Peter McCombs  
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 July 18, 2016.

Rock Cty. Dept. of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability