



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP- 175004

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**PRELIMINARY RECITALS**

On June 13, 2016, petitioner filed a hearing request under Wis. Admin. Code, §HA 3.05, to review a decision by the Rock County Dept. of Social Services to recover FoodShare benefits (FS). A hearing was held on July 5, 2016, at Janesville, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether the agency correctly determined an FS overpayment.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson St., 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 resides with her two children, her mother, and her younger sister.
3. On December 21, 2015 petitioner's mother applied for FS. She reported that she purchased on prepared meals separately from petitioner, and that petitioner paid her \$600 per month rent. FS were opened for petitioner's mother only. Petitioner's sister was not included in the FS household because she was listed as receiving FS in another state.

4. The county started an investigation concerning the whereabouts of petitioner's father, who is divorced from petitioner's mother. The investigation eventually concluded that he did not live in the household, but during the investigation petitioner and her mother both told the investigator that they purchased and prepared meals together. They also stated that they had access to petitioner's father's debit card and could use it for family expenses.
5. Petitioner was employed at two jobs. However, the second one at [REDACTED] did not start until February, 2016.
6. An agency representative determined an FS overpayment on petitioner's mother's case. Petitioner and her children were added to the FS case because they purchase and prepare meals together. Petitioner's income was added to the budget retroactively; however, the representative budgeted the [REDACTED] income for the months of December through February, when it should not have been budgeted until March. In addition, the representative continued to budget the \$600 monthly rent paid by petitioner. The representative budgeted all of petitioner's father's monthly social security income; petitioner explained that only the portion paid to him on petitioner's sister's behalf was actually made available.
7. By notices dated May 9, 2016, the county informed both petitioner and her mother that they were liable for a \$570 FS overpayment for the period December 21, 2015 through April 30, 2016, claim no. [REDACTED]. Petitioner was made liable because she was an adult in the household who should have been included in her mother's FS unit.

### 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, including those not on the FS case who should have been included, 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).

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). Because petitioner and her mother purchased and prepare meals together, they should have been included together in the FS household. Thus petitioner's income would have been included. In addition, because the social security paid to petitioner's father on her sister's behalf was made available to the household, that income had to be included in the FS budget. See FS Handbook, App. 4.3.1, which provides that if income of a non-family member is available to the family, it is budgeted; furthermore, the income is for petitioner's sister, who is a family member.

The county thus generally made the correct determinations. However, the calculations had errors. As acknowledged by [REDACTED], the representative who did the calculations, petitioner's income from [REDACTED] should not have been budgeted for December through February because petitioner did not start to work there until sometime in February. Petitioner's \$600 rent paid to her mother should not have been budgeted because, if petitioner is included in the FS household, her income already would be counted once as earned income; counting it then as unearned rental income would result in it being counted twice. Finally, [REDACTED] budgeted all of petitioner's father's social security in the overpayment calculation, but petitioner explained that only the portion paid on her sister's behalf actually is available to the family.

I will remand the matter to the county to re-determine the overpayment by removing [REDACTED] income for the months of December through February, removing the \$600 rental income, and removing the father's portion of his monthly social security (keeping only the portion paid on petitioner's sister's behalf). The county should notify petitioner of the results of the new calculation. If petitioner disagrees with the result she can file a new appeal.

### **CONCLUSIONS OF LAW**

Petitioner's mother potentially was overpaid FS because petitioner and her children should have been included in the FS household as they live with her and purchase and prepare meal together. However, the county erred in calculating the overpayment by including incorrect income in the determination.

**THEREFORE, it is ORDERED**

That the matter be remanded to the county with instructions to re-determine a possible FS overpayment to petitioner's mother by budgeting only income available to the household during the months in question as described in the last paragraph of the discussion. The county shall do so, and notify the liable individuals of the result, 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, **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 6th day of July, 2016

\s \_\_\_\_\_  
Brian 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 July 6, 2016.

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