



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

Case #: FOP - 175028

PRELIMINARY RECITALS

Pursuant to a petition filed on June 15, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Brown County Human Services regarding overpayments of FoodShare benefits (FS), a hearing was held on August 24, 2016, by telephone. At the request of the county agency, the record was held open for 10 days for the submission of additional information. A hearing set for July 21, 2016, was rescheduled at the petitioner's request.

The issue for determination is whether the county agency correctly determined that the petitioner was overpaid a total of \$5,427 in FoodShare benefits from June 1, 2011 – February 28, 2013, due to client errors in reporting household composition and income.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Fraud Investigator
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # ) is a resident of Brown County. She was the casehead of a reported 2 person FS group receiving assistance in Brown County from at least June 1, 2011, through February 28, 2013.

2. On January 23, 2013, the agency referred the petitioner's FS case to the Brown County Sheriff's Department for a fraud investigation because an agency income maintenance worker had performed a background check on the petitioner's boyfriend, [REDACTED], and determined that he was listed as living with her at [REDACTED] in the Wisconsin Department of Transportation records database, the Wisconsin Circuit Court Access Program (CCAP), and the U.S. Postal Service database. See, Exhibit #18.
3. The petitioner filed an application with the county agency in February, 2011, for public assistance stating that she lived at [REDACTED]
4. On April 17, 2011, [REDACTED] received a traffic citation from Officer Derrig of the Ashwaubenon Police Department and he provided Derrig with a residence address of [REDACTED]. See, Exhibit #18, p. 4.
5. On June 13, 2011, [REDACTED] provided the circuit court with an address indicating he resided at [REDACTED] for purposes of the traffic citation, above. See, Exhibit #18.
6. On a date uncertain in June or July, 2011, the petitioner gave birth to [REDACTED]'s daughter, [REDACTED]. He was adjudicated the father on July 14, 2011.
7. On May 11, 2012, the petitioner reported to the county agency that she had changed her address and now lived at [REDACTED]. See, Exhibit #18, p. 4.
8. On June 23, 2012, [REDACTED] provided the circuit court with an address update indicating her resided at [REDACTED]. See, Exhibit #18.
9. On September 17, 2012, [REDACTED] apparently updated his address with the circuit court and provided the [REDACTED]. See, Exhibit #18, p. 3.
10. [REDACTED] apparently informed his probation agent that he was living at [REDACTED] from August 17, 2011 – May 1, 2012; and at [REDACTED] from May 1, 2012 – probation ended on August 9, 2012. See, Exhibit #18, at p. 4.
11. [REDACTED] was listed at the [REDACTED] address with the U.S. Postal Service as of an inquiry on January 13, 2013.
12. Sheriff's Deputy [REDACTED] interviewed the petitioner on March 20, 2013, and the petitioner signed and acknowledged a written statement typed by [REDACTED] after she reviewed it, attesting to it that she signed voluntarily. See, Exhibits #19 & #20.
13. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that she met [REDACTED] in spring 2011. See, Exhibit #19 & #20.
14. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that [REDACTED] began living with her "off and on" when she moved into the residence at [REDACTED] in May, 2010. See, Exhibit #19 & #20.
15. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that [REDACTED] began staying with her at [REDACTED], and she again became pregnant in September, 2011. See, Exhibit #19 & #20.

16. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that [REDACTED] began living with the petitioner consistently at [REDACTED] (when she moved into a new apartment) beginning in May, 2012, i.e., more than before when he had been staying over with her 4 or 5 nights per week, but sometimes disappearing for 2-3 days. See, Exhibit #19. He was reportedly there more consistently because the petitioner had agreed that [REDACTED]'s son [REDACTED] could live with them instead of with his biological mother, and [REDACTED] wanted this arrangement. [REDACTED]'s other and older son was also living there, and that was part of the reason [REDACTED] wanted to live there. See, Exhibits #19 & #20.
17. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that [REDACTED] began paying water, electric and cell phone bills at the [REDACTED] apartment in about August, 2012, because she asked him to. This was for because he was living with her at the [REDACTED] address. See, Exhibit #19 & #20.
18. The petitioner reported to the agency in the first quarter of 2013 that [REDACTED] had been living with her since January 1, 2013. See, Exhibit #19 & #20.
19. On March 26, 2013, Sheriff's Deputy [REDACTED] interviewed the boyfriend, [REDACTED], and he signed and acknowledged a written statement typed by [REDACTED] after he reviewed it, attesting to it that he signed voluntarily. See, Exhibit #21.
20. [REDACTED] admitted in his written statement that he was living with the petitioner at the time school ended in early summer, 2012, in [REDACTED], at the time that [REDACTED] moved in, i.e., late May or early June, 2012. He did not state when he moved in with her for the first time. See, Exhibit #21.
21. At no time in 2012 did the petitioner report that [REDACTED] was living with her and had income. See, Exhibit #22, Case Comments from 2012.
22. [REDACTED] had the earned income described in Exhibit #14, #15 & #16; and none of this income had been reported by the petitioner prior to July 8, 2015, because she had not reported him as a household member prior to the first quarter of 2013.
23. By a FoodShare Overpayment Notice dated May 4, 2016, the Brown County Human Services Department informed petitioner that she was overpaid \$3,499 in FS, claim no. [REDACTED], due to a client error in failing to report accurate household members. The agency determined [REDACTED] should have been part of a 3 person household. See, Exhibit #2. The overpayment was computed as shown in Exhibit #6.
24. By a second FoodShare Overpayment Notice dated May 4, 2016, the Brown County Human Services Department informed petitioner that she was overpaid \$1,928 in FS, claim no. [REDACTED], due to a client error in failing to report accurate household members. The agency determined [REDACTED] should have been part of a 3 person household. See, Exhibit #2. The overpayment was computed as shown in Exhibit #6.
25. On June 15, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the overpayment of FS found on May 4, 2016.

### **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.

In this case the overpayment consisted of benefits that the county agency determined to have been overpaid for 21 months because she did not report that her boyfriend was living with her and that he had income continuously from work. Her boyfriend, [REDACTED], is also the adjudicated father of a child-in-common with the petitioner.

The standard in an overpayment action is whether the preponderance of the evidence shows that the overpayment occurs as alleged.

There are two sub-claims here, i.e., a \$1,928 FS overpayment for the period of June 1, 2012 to February 28, 2013; and a second claim for \$3,499 for an earlier period of June 1, 2011 to May 31, 2012.

It is uncontroverted by the petitioner's admission in her statement, as well as corroborated by [REDACTED]'s hearsay statement, that [REDACTED] was living with the petitioner at the [REDACTED], [REDACTED] residence from at least June 1, 2012 to February 28, 2013. See, Exhibits #20 & #21. In addition, it is crystal clear that the petitioner did not report to the agency [REDACTED] was living with her and had income until near the end of the first quarter of 2013. See, Exhibit #22, (*Case Comments* in calendar year 2012). When his income and presence were added to the household, she was overpaid. See, Exhibits #14 - #16. Nor has she pointed to any error in the calculations. See, Exhibit #6. The \$1,928 FS overpayment claim (No. [REDACTED]) is fully affirmed here as established.

The prior overpayment period is more problematic on the presented evidence. The petitioner admitted in her statement to Deputy Sheriff [REDACTED] that she had been dating [REDACTED] since 2008 (i.e., for 5 years in the fall of 2013, see, Exhibit #20), and that he was living with her "off and on" after she moved in at [REDACTED] in May, 2010. See, Exhibit #20. But she also asserted that he was staying with her at [REDACTED] about "4 or 5 days a week"; and "about 5 days a week but never on the weekends". See, Exhibit #19. She admitted that [REDACTED] had told his probation officer he was living at her [REDACTED] address in the spring of 2011.

Deputy Sheriff [REDACTED]'s report was hearsay evidence because she did not appear at the hearing, but it is useful and admissible evidence because it corroborates that [REDACTED] did indeed report to his probation agent that he was living at [REDACTED] from August 17, 2011 through May 1, 2012, when he then changed his address to the same [REDACTED] address that the petitioner was living at. See, Exhibit #18. Likewise, [REDACTED]'s report notes that [REDACTED] told Office Derrig in Ashwaubenon on April 17, 2011, that he lived at [REDACTED]; and again re-stated that address to the court when the traffic citation appearance occurred on June 13, 2011. See, Exhibit #18.

While the evidence on the second claim is a closer call, I am satisfied that it is more likely than not that the petitioner and [REDACTED] were living in the same household in the period of June 1, 2011, through May 31, 2012, as well. He should have been reported, and his income reported, and it was not. I can only conclude that the couple was playing fast and loose with the public assistance system, and that generally speaking, [REDACTED] was making the [REDACTED] and [REDACTED] residences his home at the same time as the petitioner. Indeed, apparently she again became pregnant in September, 2011, by [REDACTED] during his cohabitation, and soon after, two of his own children moved in with the petitioner and [REDACTED]. They were acting, and portraying themselves to the public, as a blended household. And as with the other FS overpayment claim discussed above, the petitioner has not pointed to any mathematical or computational error by the agency. See, Exhibits #14, #15 & #16. The \$3,499 FS overpayment claim (No. [REDACTED]) is fully affirmed here as established.

**CONCLUSIONS OF LAW**

The county agency correctly determined that the petitioner was overpaid \$5,427 of FS in the period of June 1, 2011, through February 28, 2013.

**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, **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 2nd day of September, 2016

\s \_\_\_\_\_  
Kenneth D. Duren  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on September 2, 2016.

Brown County Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability