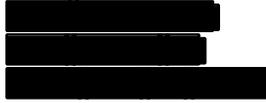




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOP - 175353

PRELIMINARY RECITALS

Pursuant to a petition filed on July 1, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Brown County Human Services regarding FoodShare benefits (FS), a hearing was held on September 26, 2016, by telephone.

The issue for determination is whether the agency correctly determined that the petitioner has been overpaid FoodShare benefits from August 2008 through December 2013.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:


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

ADMINISTRATIVE LAW JUDGE:

Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Brown County.

2. The petitioner shares joint custody of his daughter [REDACTED] with his ex-wife. According to petitioner's unrefuted testimony, the court ordered placement agreement designates that the petitioner and his ex-wife should each have 50-50 placement. However, over the years, petitioner's daughter has primarily resided with her mother.
3. Petitioner included his daughter [REDACTED] as part of his household in his application for FoodShare benefits going back to August 2008.
4. Petitioner and his ex-wife agreed that he would include their daughter in his FoodShare group because petitioner's ex-wife was found ineligible for FoodShare benefits.
5. Petitioner provided his daughter with food from his FoodShare benefits.
6. In 2013, the agency hired the Brown County Sheriff's Department to conduct an investigation into the petitioner's household size.
7. As a result of the Sheriff Department's investigation, it was determined in January 2014 that [REDACTED] did not reside with her father going back to August 2008 through December 2013.
8. On May 25, 2016, the agency provided the petitioner with seven Notices of Overpayment of FoodShare benefits for the time period August 15, 2008 through December 31, 2013 in the total amount of \$8,250.

DISCUSSION

Federal regulations require state agencies to "establish a claim against any household that has received more food stamp benefits than it is entitled to receive." 7 CFR § 273.18(a). This means that the agency must recover all overpaid benefits regardless of who is at fault. Because FoodShare benefits are determined in part by the size of the household, if more persons are included in a household than should be, it is likely that an overpayment will result.

FoodShare regulations hold that a household is composed of 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). This definition does not solve the problem posed by this case because the child in question lives with and eats with both parents. Nor does 7 C.F.R. § 273.1(b), which pertains to specific situations such as boarders, disabled person, and foster care recipients, provide guidance. The only other relevant instruction offered by the federal regulation allows state agencies to create policies that answer questions relevant to household composition:

For situations that are not clearly addressed by the provisions of paragraphs (a) and (b) of this section, the State agency may apply its own policy for determining when an individual is a separate household or a member of another household if the policy is applied fairly, equitably and consistently throughout the State.

7 C.F.R. §273.1(c).

Wisconsin's policy, which is found in the *FoodShare Wisconsin Handbook*, § 3.2.1.1, provides the following guidance in these situations:

Children are included in the household where they reside when they are under the care and control of a parent or other caretaker in that household. There may be situations when the residence of a child is not easily determined. There are many methods that can be used to determine the child's residence. If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint

custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one FoodShare assistance group, but may be included in more than one food unit.

If the parents cannot or will not decide, compare the parents' activities and responsibilities against the following list and determine which one is exercising more control than the other:

1. If the parents reside in different school districts, where does the child attend school? Who selected the school?
2. Who assists the child with homework or school-related tasks?
3. Are there tuition costs for the child's education? If so, who pays those costs?
4. If the child is enrolled in day care, who arranges for and pays these costs?
5. Who is responsible for taking the child to and from school and/or day care?
6. Which parent is listed as the contact for emergencies at the child's school or day care provider?
7. Who arranges medical and dental care for the child? Who selects the physician and dentist?
8. Who maintains the child's medical records?
9. Who initiates decisions regarding the child's future?
10. Who responds to medical or law enforcement emergencies involving the child?
11. Who spends money on food or clothing for the child when the child visits the absent parent?
12. Who disciplines the child?
13. Who plays with the child and arranges for entertainment?
14. Are more of the child's toys, clothing, etc. kept at one parent's home than the other's?

Only one parent can receive FS for a child. If you still cannot determine which food group the child should be in, the child should be included in the food group of the parent who first applies. Use the best information available to make your decision, and document in case comments the basis of your determination. If you still cannot determine which food unit the child should be in, call the CARES call center.

FS Handbook, § 3.2.1.1.

Although the petitioner in the present matter had a court ordered placement agreement that afforded him 50-50 placement of his daughter, the reality was that his daughter spent the majority of time residing with her mother. The Brown County Sheriff's Department investigation, supported by the statement from the daughter herself, as well as, the petitioner's own admission established that the petitioner's daughter resided the majority of time with her mother, particularly during the school years for the years 2008 to 2014. Petitioner acknowledged that when his wife did not qualify for FoodShare benefits, he continued to keep [REDACTED] listed on his household in order to obtain the FoodShare benefits for his daughter. The petitioner stated that he provided the food he obtained from his benefits to his daughter. However, the FoodShare regulations do not allow for the receipt of benefits for individuals who are not primarily residing in the household. Accordingly, the preponderance of the evidence clearly established that the petitioner received FoodShare benefits that he was not entitled to receive given that his daughter [REDACTED] primarily resided with her mother in a separate household.

CONCLUSIONS OF LAW

The petitioner was overpaid FoodShare benefits in the amount of \$8,250 as a result of improperly listing his daughter in his household when she primarily resided in another household.

THEREFORE, it is

ORDERED

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 3rd day of October, 2016

\s _____
Kristin P. Fredrick
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 October 3, 2016.

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