



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOP - 175455

PRELIMINARY RECITALS

Pursuant to a petition filed July 8, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by Brown County Human Services to recover FoodShare benefits (FS), a hearing was held on August 10, 2016, by telephone.

The issue for determination is whether petitioner is liable for an overpayment issued to his son’s mother.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: 
Brown County Human Services
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Brown County.
2. Petitioner’s son was born January 14, 2014. The child’s mother is M.H. M.H. received FS herself, the newborn, and an older child by a different father. When the child was born M.H. reported that petitioner was the father but they did not live together.

3. In April, 2014 M.H. did an FS review. She again asserted that she and petitioner were not living together.
4. In June M.H. reported that petitioner now was living with her (he had just lost his job). The county then investigated and found that the couple had signed a lease together the first of January, 2014. The landlord told the investigator that the couple lived together in one unit after the lease was signed and that the other unit was vacant.
5. The county worker obtained petitioner's income records and determined that the FS issued for a household of four, with petitioner's income included, would have been much lower than actually issued. On May 11, 2016, the county sent a notice to M.H. informing her that she was overpaid \$1,611 in FS from February 1 through July 31, 2016 because she failed to report petitioner in her household, claim no. [REDACTED]. She did not appeal.
6. On June 13, 2016, the county sent petitioner a notice informing him that he was liable for overpayment claim no. [REDACTED], again because M.H. did not report him in the household.

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).

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). FS rules provide further 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.

Under the law, if petitioner and M.H. lived with their child in common, they had to be included together in the FS household as of February 1, 2014, which was the first benefit month after the child was born.

The first issue is whether petitioner lived with M.H. beginning in January, 2014. Petitioner did not vociferously contest the finding, and the preponderance of the evidence is that they were together. They signed a lease together the first of January, a fact that petitioner does not dispute. The landlord's statements to the investigator that they shared the unit and that the other unit was vacant, are corroborated by the signing of the lease. In addition, petitioner's employer had that address down as petitioner's residence. While they had lived in the separate units previously, by January, 2014 they were sharing one unit.

The second, and more contested issue, is whether petitioner can be liable for the overpayment when he never applied for FS and did not act with M.H. to receive FS. The federal regulation at 7 C.F.R. §273.18(a)(4) says simply, with regard to liability, that all adult members of the household are liable without defining "household" as members of the assistance group. The Wisconsin Department, in its FS Handbook, Appendix 7.3.1.2, defines the liable parties as adult members of the FS unit and adults who should have been included in the FS unit.

Because petitioner was living in the household he should have been included in the FS unit. He was not included because M.H. falsified her reports of the living situation. Under the law and state policy the county agency can make him a liable party. Even though petitioner never requested FS, presumably he benefited from the FS received and utilized by M.H.

I conclude that the county correctly made petitioner a person liable for repayment of the FS overpayment issued to his son's mother. She also is liable, and any payments made by either person will reduce the balance owed.

CONCLUSIONS OF LAW

The county correctly made petitioner a liable party for an FS overpayment issued to the mother of his son because petitioner lived in the FS household and should have been included in the FS unit.

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 17th day of August, 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 August 17, 2016.

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