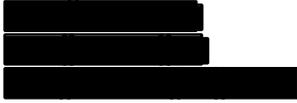




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOP - 175988

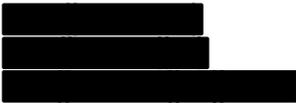
PRELIMINARY RECITALS

Pursuant to a petition filed August 5, 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 31, 2016, by telephone.

The issue for determination is whether petitioner is liable for an overpayment paid to a former household member.

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. From at least 2012 and into 2014 petitioner resided with K.T., who was the mother of his two sons.

3. In June, 2013, K.T. applied for FS for herself and the two children. She reported to the county that petitioner was not living with them. She received FS for the three-person household until February 28, 2014. FS ended after the county determined that petitioner had been living in the household the entire time (the home was owned by petitioner's family).
4. The county obtained petitioner's income information and determined that the household would not have been eligible for FS during the period. By notices dated June 16, 2016, the county informed petitioner and K.T. that they were liable for a \$3,366 FS overpayment from June, 2013 through February, 2014, claim no. [REDACTED].

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:...

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 federal law, because petitioner lived with K.T. and their children in common, they should have been included together in the FS household. With petitioner's income added, the household would not have been eligible to receive FS, and thus all FS issued are considered an overpayment.

Petitioner's major issue is that he was unaware that K.T. was receiving the FS, and when he found out he told her to close the case (she did not, it would appear). The problem for petitioner is that the federal law

requires repayment by all adult household members (not just open FS unit members). Furthermore, the FS Handbook, App. 7.3.1.2 makes clear that all adults who were in the food unit and all adults who should have been in the food unit at the time of the overpayment are liable.

While petitioner has a legitimate gripe about being liable for the FS overpayment, the issue is between him and K.T. The agency has the right to seek recovery from all liable parties.

CONCLUSIONS OF LAW

The county correctly determined that petitioner was liable for an FS overpayment caused by the mother of his children erroneously reporting him as being out of the household.

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.

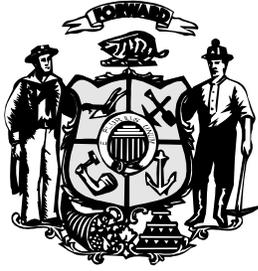
APPEAL TO COURT

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 7th day of September, 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 September 7, 2016.

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