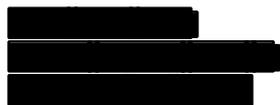




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOO - 176136

PRELIMINARY RECITALS

Pursuant to a petition filed August 10, 2016, under Wis. Admin. Code, §HA 3.03(1), to review decisions by the La Crosse County Dept. of Human Services regarding FoodShare benefits (FS), a hearing was held on August 31, 2016, by telephone.

The issue for determination is whether the agency correctly determined that the father of petitioner's children should be included in her FS household.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
La Crosse County Dept. of Human Services
P.O. Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of La Crosse County.
2. Petitioner received FS for herself and her children since July, 2014. Initially the group was three, and a newborn was added in June, 2016. The father of all three children is J.B.

3. Petitioner lives with J.B.'s parents, but they signed an affidavit attesting that they do not purchase and prepare meals together.
4. The county began an investigation into the household in May, 2016. It discovered that J.B. used his parents' address as his own for the entire time that petitioner received benefits. All of his business and personal affairs have been at that address, and he told the child support agency that he lived there.
5. The county concluded that J.B. should have been part of petitioner's household. The county requested J.B.'s income information on May 10, 2016, and when nothing was received, the county closed FS effective July 1, 2016 because petitioner did not provide proof. See Exhibit 2.
6. By notices dated July 8, 2016, the county informed petitioner that she was overpaid a total of \$4,069 in FS from July, 2014 through June 30, 2016, claim nos. [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The overpayments were for all FS issued to petitioner during the time period because the county was unable to obtain J.B.'s income history for most months. For the months J.B.'s income was obtained the household was over the income limit.
7. J.B. lived with petitioner throughout the period she received FS.

DISCUSSION

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, if petitioner and J.B. live with their children in common, they must be included together in the FS household.

An FS recipient is required to verify information that can affect eligibility. 7 C.F.R. §273.2(f). If the household fails to verify required information by the time limit, the agency may deny the benefits. 7 C.F.R. §273.14(g)(3); FS Handbook, Appendix 1.2.1.2.

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 a 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 sole issue that petitioner contested was whether J.B. lived with her. She testified that he lives on a piece of property in Clark County owned by his father (which is what she and his parents told the county investigator). The property is approximately a two-hour drive from ██████████, and even further to the Minnesota location of J.B.'s employer. Neither petitioner nor the parents could give an address for the property, and the investigator could find no evidence that someone lived on the property owned by J.B.'s father (he went to the only Clark County property listed with the Register of Deeds under that name).

I conclude that the agency actions were correct. The only credible evidence is that J.B. lived in the same home, and that the family created a fictional residence for him so that petitioner could obtain benefits. As is often the case, the problem was that the family tried to have it both ways. They told the child support agency that J.B. lived in the home so that he could avoid child support, while telling the economic support agency that he did not live in the home to maximize benefits. Eventually the duplicity catches up with them.

CONCLUSIONS OF LAW

1. The county correctly determined that the father of petitioner's children lived with her throughout the period that she received FS.
2. The county correctly closed FS when petitioner did not verify the father's income.
3. The county correctly determined and FS overpayment because petitioner falsely reported the father as being out of the home.

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 8th 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 8, 2016.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability