



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOP - 176402

PRELIMINARY RECITALS

Pursuant to a petition filed August 23, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by the Jefferson County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on September 20, 2016, by telephone.

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

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: 
Jefferson County Dept. of Human Services
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Jefferson County.
2. Petitioner applied for FS in August, 2013, reporting that she lived with her three children. She reported that she and her husband, J.B., were separated. J.B. is the father of two of petitioner's three children. FS were opened.

3. In April, 2016 the county began an investigation into the household situation. Petitioner told the investigator that she lives in the home owned by her mother. Her mother lives on the main floor of the residence and she lives upstairs. She acknowledged that J.B. is at the home regularly, but that he lives with his father and his father's girlfriend in a one-bedroom apartment. She did not know the father's address.
4. The investigator found that J.B. uses petitioner's address in Dept. of Transportation records, court records, and with his employers. J.B. has never been ordered to pay child support even though he has been working full-time since 2013 and petitioner has been receiving welfare benefits.
5. J.B. spoke with the investigator. J.B. acknowledged staying with petitioner at least five nights per week and on other nights stays with his father. He did not know his father's address.
6. After the investigation petitioner reported that J.B. moved back into her household.
7. The county obtained J.B.'s employment records. The county determined that, with him and his income in the case, the household was overpaid a total of \$20,277 from August 29, 2013 through May 31, 2016, claim nos. [REDACTED]. The county notified petitioner of the claim by a notice dated August 3, 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.

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 definitions if J.B. lived with petitioner he had to be included in the household. There is no definition in the code of the meaning of “living with.” Furthermore, in my 25 years in this position I have not found an appellate decision that defines the phrase. Basically the determination revolves around a common sense interpretation of whether a person is living in the FS household.

The problem for petitioner’s side is that there is no evidence that the couple actually was separated except the couple’s own statements and petitioner’s mother’s agreement. Even taking their statements at face value J.B. was a regular member of the household, spending time there at least five nights per week. Both petitioner and her mother focused on where J.B. slept, but it is evident that he was a household member. Furthermore, I am not convinced that J.B. actually did sleep elsewhere. It is astounding that neither petitioner nor J.B. knew the address at which J.B. allegedly was living. Petitioner described it as a one-bedroom apartment shared with J.B.’s father and his father’s girlfriend. I thus am to believe that J.B. has spent the last four year sleeping on a couch in his father’s living room, and even though he lived with his father he continued to report petitioner’s address to government and business entities. Petitioner had no good explanation for why J.B. used her address as his mailing address.

After the hearing petitioner provided a copy of a Notice of Hearing showing a different address for J.B. The Notice was mailed in September, 2012, eleven months before petitioner applied for benefits. I fail to see how a notice from 2012 proves that J.B. lived at a different residence from petitioner from 2013 to 2016.

The testimony of petitioner and her mother lacked credibility. I believe that J.B. lived with petitioner during the period in question. There may have been periods when they argued and he left home, but I believe that any such periods were short term. And finally, when she realized that she was under investigation, petitioner reported that he moved back home. I have been doing hearings like this for 26 years, and it is remarkable how frequently allegedly estranged couples reconcile when they realize that they are under investigation. That usually is yet another sign that they were not estranged in the first place.

Petitioner did not contest the overpayment calculations. I conclude that the overpayment claim was imposed correctly.

CONCLUSIONS OF LAW

Petitioner’s husband was correctly determined to live with petitioner during the period August, 2013 through May, 2016, and the count’s overpayment determination was correct.

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 30th 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 30, 2016.

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