



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/170396

PRELIMINARY RECITALS

Pursuant to a petition filed November 24, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Douglas County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 13, 2016, at Superior, Wisconsin.

The issue for determination is whether the county agency submitted adequate evidence to establish that the petitioner received an overpayment of FoodShare.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]

Douglas County Department of Human Services
1316 North 14Th Street
Suite 400
Superior, WI 54880

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Douglas County.
2. The county agency seeks to recover \$8,480 in FoodShare benefits the petitioner received from December 27, 2010, through April 30, 2015, because it failed to count money he withdrew from

his IRA as income when determining his benefits. (The notice indicated that the alleged overpayment ended on April 31, 2015, but April has 30 days.)

3. During the period of the alleged overpayment, the following amounts were transferred from the petitioner's IRA to a money market account and then used to pay his mortgage:
 - a. \$427.49 (12/1/10-3/21/11)
 - b. \$418.84 (4/1/2011-3/2/12)
 - c. \$376.55 (4/2/12-3/1/13)
 - d. \$388.19 (4/1/13-3/3/14)
 - e. \$323.03 (4/1/14-3/2/15)
 - f. \$324.93 (4/1/15-8/3/15)
4. The county agency states that the petitioner's household earned income was \$433.48 from December 2010 through May 2011, \$0 from June 2011 through May 2012, \$1,419 from June 2012 through April 2013, \$1,720 from May through July 2013, \$0 from July 2013 through April 2015. The agency did not provide evidence of the source of this income.
5. The agency alleged that the petitioner's household unearned income, including the amounts listed in Paragraph 3, was \$1,108.89 from December 2010 through May 2011, \$1,184 from April through November 2011, \$1,092.81 from December 2011 through May 2012, \$1,072.15 from June through November 2012, \$768.88 in December 2012, \$0 from January through March 2013, \$1,427.52 in April 2013, \$1,419.14 from May 2013 through May 2014, and \$1,363.88 from June 2014 through April 2015. The evidence is inadequate to verify that this is correct.
6. In addition to the payments listed in Paragraph 3, the petitioner received the following lump sums from his IRA:
 - a. \$9,000 on 3/21/11
 - b. \$495.61 on 7/25/11
 - c. \$8,300 on 3/28/12
 - d. \$560.04 on 7/25/12
 - e. \$658.74 on 7/16/13
 - f. \$500 on 11/18/13
 - g. \$6,000 on 3/27/14
 - h. \$2,000 on 7/17/14
 - i. \$500 on 11/13/14
 - j. \$4,500 on 3/27/15
 - k. \$700 on 7/9/15
7. There were three persons in the petitioner's household from December 2010 through July 2013 and two persons from August 2013 through April 2015.
8. The agency did not provide evidence of the petitioner's entire shelter costs.

DISCUSSION

FoodShare agencies must "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). This regulation requires the agency to recover all overpayments, regardless of whose error caused the overpayment. The amount of an allotment depends upon a household's size and countable net income. The petitioner has received FoodShare since at least 2010. During this time, he has an intermittent mix of earned and unearned income. He also has had an IRA. The basis of the agency's claim is that it recently discovered that he has been withdrawing between \$323.03 and \$427.49 a month from this IRA to pay his mortgage. *See Finding of Fact No. 3*. It contends that this withdrawal is unearned income that was never counted when it determined his monthly

FoodShare allotment. It states that if it had counted these withdrawals, his household would have received \$8,480 less than it did in FoodShare benefits from December 27, 2010, through April 30, 2015.

I will assume for this decision that the IRA withdrawals were unearned income. See *FoodShare Wisconsin Handbook*, § 4.3.4.2.; 7 CFR § 273.9(b)(2). But even assuming this, the agency must still present enough evidence about the petitioner's income and deductions to prove that an overpayment occurred. What evidence it did present is difficult to follow. Its primary document is 129 pages long. Because of its size—when online it was not only long but in the TIFF format—I was unable to download it before the hearing. This prevented me from asking questions to clarify the issues at the hearing. The agency apparently tried to email me a PDF version before the hearing, but I did not receive it. When I did receive a copy I could open after the hearing, it was still 129 pages long. Most of the length occurred because the agency submitted what should have been several documents as a single document. This document included the overpayment notice, caseworker notes, monthly benefit calculations, a summary of unreported income, an overpayment worksheet, and the various bank documents on which the other documents were based. The agency did not indicate in its written submission where each portion of its proof could be found. Nor did it provide any detailed testimony about how it calculated the overpayment. Eventually, after several hours, I was able to figure out what was in this and the other smaller documents it submitted.

But that evidence is insufficient to prove the facts necessary to establish the overpayment. Other than the IRA, I found no evidence of what the sources of the petitioner's earned and unearned income were. This probably is not a problem for earned income because the petitioner did not challenge these amounts. However, I could not determine what portion of the unearned income the agency attributed to disability payments such as social security and what portion it attributed to IRA withdrawals. I cannot extrapolate this from other sources because the overpayment worksheet the agency prepared contains obvious errors. The income and expenses the agency includes in this sheet represent amounts it believes are correct and should have been used to determine his household's allotment. Because the agency contends that the petitioner received unearned income through his IRA every month, the monthly unearned income shown on its worksheet should at least equal the amount he received from his IRA. But for three months—from January through March 2013—it indicates that he received no unearned income. Without underlying documentation of income other than the IRA, there is no way to determine whether the figures in this worksheet are correct.

It is also not possible to determine whether the agency accurately reported the petitioner's total shelter costs. This is important because these costs are an allowable deduction when determining net income. It equals the amount that housing costs, including a standard utility allowance currently set at \$450, exceed 50% of the net income remaining after all other deductions are subtracted from gross income. *FoodShare Wisconsin Handbook*, § 4.6.7; 7 C.F.R. § 273.9(d)(6)(ii); *FoodShare Wisconsin Handbook*, § 8.1.3. The IRA is used to pay the petitioner's mortgage, but it is unclear whether his payment is just the mortgage or also includes his property taxes and insurance. Again, I have no way to determine whether the deduction it attributed to him is correct.

The agency has the burden of proving that an overpayment exists by the preponderance of the credible evidence. The only evidence it provides that gives what it considers to be the actual overpayment is the worksheet. Because that cannot be relied upon, it does not provide a basis for establishing the amount of the overpayment. Not every instance in which the agency presents inadequate evidence requires that the entire overpayment claim fail. Often, if there is inadequate evidence, there is still enough evidence to establish that the overpayment was at least some particular lower amount. In these instances, the amount of the allowed claim is reduced to what has been proved. But when the evidence is such that no particular lower amount can be established by the preponderance of the credible evidence, coming up with an alternate overpayment amount requires speculation. Speculation is not a valid basis for a legal finding.

Because speculation is the only way to come up with a particular overpayment amount, the agency cannot recover the alleged overpayment.

CONCLUSIONS OF LAW

The county agency has not presented enough reliable evidence to establish its claim.

THEREFORE, it is

ORDERED

That this matter be remanded to the county agency with instructions that within 10 days of the date of this decision it end its attempts to recover the overpayment of FoodShare benefits it alleges the petitioner received from December 1, 2010, through April 30, 2015.

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, Madison, Wisconsin 53703, **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 11th day of February, 2016

\sMichael D. O'Brien
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 February 11, 2016.

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