



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/170470

PRELIMINARY RECITALS

Pursuant to a petition filed December 03, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Ashland County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 08, 2016, at Ashland, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare that allegedly occurred because she did not reside in Wisconsin.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

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

By: [REDACTED]

Ashland County Department of Human Services
630 Sanborn Avenue
Ashland, WI 54806

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Ashland County.
2. The county agency seeks to recover \$776 in FoodShare the petitioner received from February through May 2015.
3. The petitioner received FoodShare through Ashland County.

4. In January 2015, the petitioner's daughter, who lives in Michigan, had hip surgery. The petitioner went to stay with and care for her. While her daughter was healing, the petitioner had emergency heart surgery. Her daughter then cared for her, which prevented her from leaving Michigan.
5. The petitioner maintains her Wisconsin driver's license, she continues to own her home in Wisconsin, and she remains registered to vote there.
6. The petitioner did not seek to continue receiving FoodShare in Wisconsin after she was due for a renewal.
7. The petitioner intends to return to Wisconsin.

DISCUSSION

State 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 FoodShare overpayments regardless of whose error caused the overpayment. The county agency seeks to recover \$776 in FoodShare the petitioner received from February through May 2015 because it contends that she was not a Wisconsin resident during that period.

The petitioner lived in Butternut, Wisconsin. In January 2015, her daughter, who lives in Michigan, had hip surgery. The petitioner went to stay with and care for her. As her daughter was recovering, the petitioner had emergency heart surgery. Her daughter then cared for her, which prevented her from leaving Michigan. The agency notified her in writing on April 13, 2015, that she had to renew her benefits by the end of May. The Post Office returned this notice, showing that her address had changed. The agency sent another notice on April 27, which was again returned, showing her address had changed. The agency contends that the petitioner should have reported the change within 10 days of when she moved because FoodShare rules require recipients to report a change of circumstances within this period. 7 CFR § 273.12(a)2. I disagree because the preponderance of the credible evidence indicates that the petitioner never intended to move to Michigan.

FoodShare residency requirements are not strict. Federal rules require that a "household shall live in the State in which it files an *application* for participation." [emphasis added] States cannot impose durational requirements or require a household to live in a permanent dwelling, have a fixed address, or intend to remain in the state permanently. 7 CFR § 273.3(a). Nothing in the federal rules addresses what happens when a person moves to another state other than to say that a person may not "participate as a member of more than one household or in more than one project area, in any month." (This rule does not apply to those in a shelter for battered women and children.) *Id.* Likewise, state policy on residence states that "[a]pplicants for FoodShare benefits must reside in, or be temporarily absent from Wisconsin." [emphasis added] *FoodShare Wisconsin Handbook*, § 3.2.1.

Wisconsin FoodShare policy does describe when a person is considered temporarily absent. It states: "Include in the household an individual temporarily absent from the household when the expected absence is no longer than 2 full consecutive calendar months past the month of departure. Some examples are absence due to illness or hospitalization, employment, and visits." *FoodShare Wisconsin Handbook*, § 3.2.1.1. The subsection number of this provision (3.2.1.1.) indicates it is related to the previously cited subsection (3.2.1). This does not mean that a person can leave the state and continue receiving FoodShare here indefinitely. FoodShare recipients must renew their benefits periodically, and when they do these policy provisions apply. Past decisions have upheld an overpayment against a recipient who reported on her renewal that she continued to live in Wisconsin when she obviously did not. *See, e.g., FOP/150054*. One could argue that those who intend to leave permanently should report this.

But nothing in the notices sent to recipients informs them that leaving for two months is the same as leaving permanently. Imposing such a strict requirement on ongoing recipients would contradict the purpose of the program's relaxed residency requirements. Residency rules can be fairly lenient without harming a state because FoodShare benefits are provided by the federal government. The program is an attempt to ensure that persons with few resources will have a means to eat regardless of where they live in this country. The rules recognize that this group of persons is often transient, and that as long as they do not commit fraud by seeking benefits in two states, any help they receive should not be hindered by strict residency rules.

Finally, even if a recipient does have a duty to report a permanent move before the next renewal date, the provision restricting a temporary absence to two months does not apply to the petitioner because that provision refers to the "expected absence." By contending that the petitioner should have reported that she was in Michigan 10 days after she left Wisconsin, the agency is asserting that the day she left Wisconsin, she "expected" to be gone for at least two months. There is no evidence of this. She retained her Wisconsin driver's license, did not put her house on the market, and continued to be registered to vote in here. She did not know when she left how long her daughter would need care, and she certainly did not expect to have heart surgery and recuperation that required her to be in her daughter's care for an extended period.

That said, at some point her stay became more than temporary. But under the circumstances here, this did not occur before she was due to renew her benefits. When it was time to renew her benefits, she did not attempt to do so in Wisconsin. Based upon this, I find that throughout the period of the alleged overpayment, she expected to be only temporarily absent from Wisconsin. And more importantly, regardless of what state she lived in, she never got a dime more in federal FoodShare benefits than her income and household size entitled her to. Therefore, the county agency cannot recover the overpayment alleged here.

CONCLUSIONS OF LAW

The county agency cannot recover the overpayment alleged here because the petitioner was temporarily absent from the state.

THEREFORE, it is

ORDERED

That this matter is remanded to the Ashland County Department of Human Services with instructions that within 10 days of the date of this decision it take all steps necessary to remove the finding that the petitioner was overpaid \$776 in FoodShare benefits from February through May 2015 and that it end its attempts to recover those payments made in that period.

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 22nd day of January, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 22, 2016.

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