



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/173202

PRELIMINARY RECITALS

Pursuant to a petition filed March 28, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 12, 2016, at Sheboygan, Wisconsin.

The issue for determination is whether the Sheboygan County Department of Human Services (the agency) correctly determined that the Petitioner is liable for an overpayment of benefits incurred by his mother, [REDACTED], for the period of July 2014 through October 2015.

NOTE: The record was held open to give the parties an opportunity to provide 1) a complete copy of Exhibit 2; 2) a copy of the overpayment notice sent to the Petitioner; 3) documentation of when the Petitioner was placed in custody.

In an e-mail dated May 13, 2016, [REDACTED] indicated that she was unable to locate a copy of an overpayment notice that was sent to Petitioner, though a worker claimed to have sent one. [REDACTED] provided a copy of a repayment agreement (Exhibit 5) and a complete copy of Exhibit 2.

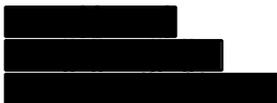
It should be noted that the Petitioner was contacted on May 18, 2016, because the recording of the hearing was very faint. The Petitioner indicated that he did not want to convene a new hearing to get a better recording and that he would accept a type written summary of the ALJ's notes as the official record.

No other documentation was submitted.

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]  
Sheboygan County Department of Human Services  
3620 Wilgus Ave  
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:  
Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. On March 2, 2016, the agency sent the Petitioner a repayment agreement for claim numbers [REDACTED] and [REDACTED] for the following FoodShare Overpayment Claims:  
  - 7/1/14 - 6/30/15 for \$3,922.00
  - 7/1/15 - 10/31/15 for \$1,455.00

(See Exhibit 5)
3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 28, 2016. (Exhibit 1)
4. The Petitioner was incarcerated from April 16, 2014, to October 29, 2014, at the Wisconsin Correctional Center. (<http://offender.doc.state.wi.us/lop/detail.do>)
5. The Petitioner was in custody at the Sheboygan County Detention Center beginning July 11, 2015. He remained there on a P.O. Hold until October 1, 2015, when he was transferred to the Milwaukee Secure Detention Facility (MSDF). The Petitioner remained at MSDF until December 29, 2015. (Testimony of Petitioner; Exhibit 2; See also <http://offender.doc.state.wi.us/lop/detail.do>)

**DISCUSSION**

7 CFR §273.18 (a)(4) states, the following are responsible for paying a claim:

- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred;
- (ii) A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an overpayment or trafficking.

The Federal regulations define household composition as follows:

*General household definition.* (a) 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) See in accord, FSH, §§3.3.1.1; 3.3.1.2 and 3.3.1.3.*

It is undisputed that the Petitioner is an adult child of PW. The agency alleges that the Petitioner is liable for an overpayment incurred by ■■■ between July 1, 2014 and October 31, 2015, because he lived with her during that time. The agency alleges that ■■■ was overpaid FoodShare benefits because she reported a child, ■■■ in her home when, in fact, he lived in Ohio.

In an e-mail dated May 13, 2015, the agency representative indicated that the agency does not have a copy of any overpayment notice that was sent to the Petitioner. The FoodShare Wisconsin Handbook requires that, "A Notice of FS Overissuance (F-16028), a completed FS Overissuance Worksheet (F-16030) and a FS Repayment Agreement (F-16029) must be sent to the client for all types of claims." *FSH §7.3.1*. Federal regulations at 7 CFR §273.18(e)(3)(i) also state, "Each State agency must develop and mail or otherwise deliver to the household written notification to begin collection action on any claim..."

Because the agency has no proof that the Petitioner was given proper notice of the overpayment, it has not properly established a claim against the Petitioner and must, therefore, cease collection efforts.

I note that the Petitioner testified that he was not living with ■■■ between July 1, 2014 and October 31, 2015. The Petitioner testified that he was either incarcerated or living with his wife.

Petitioner's testimony regarding his incarceration is corroborated by the Offender Detail Screen from the Wisconsin Department of Corrections Website, which was consulted during the hearing. This screen shows that the Petitioner was in prison during at least part of the overpayment period, specifically from July 1, 2014 through October 29, 2014 and again in the month of October 2015. The agency's own exhibits, specifically Exhibits 2 and 3, also corroborate the Petitioner's claim that he was incarcerated at the Sheboygan County Detention Center from July 2015 to October 2015.

With regard to the remaining months, the agency has provided no evidence, beyond the completely incredible double hearsay statements of ■■■ to police, to affirmatively prove where the Petitioner was living. As such, the agency was not correct in its determination that the Petitioner was living with his mother and therefore, liable for an overpayment incurred by ■■■ from July 2014 through October 2015.

Because the agency did not give the Petitioner proper notice of the overpayment, because there is clear evidence that the Petitioner was not living with ■■■ during at least eight months of the overpayment period, and because there is no credible evidence to refute the Petitioner's claim that he was not living with his mother during the remaining months of the overpayment period, the agency will have to remove the Petitioner as a liable party to the overpayment.

### CONCLUSIONS OF LAW

The agency has not met its burden to prove that it correctly seeks to recover an overpayment of benefits from the Petitioner for the period of July 1, 2014 through October 31, 2015.

**THEREFORE, it is**

**ORDERED**

That the agency remove the Petitioner as a liable party to claim numbers ■■■■■■■■■■ and ■■■■■■■■■■. The agency shall take all administrative steps to complete this task within ten days of this decision.

### **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 Milwaukee,  
Wisconsin, this 19th day of May, 2016

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\s\sMayumi M. Ishii  
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 May 19, 2016.

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