



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 173236

PRELIMINARY RECITALS

Pursuant to a petition filed on March 29, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services regarding FoodShare benefits (FS), a hearing was held on July 21, 2016, by telephone.

The issue for determination is whether Petitioner is liable for FoodShare overpayment claim # [REDACTED]

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

The hearing for this matter was combined with a BadgerCare+ overpayment appeal filed by Petitioner's mother (#MOP-173235) as well as a FoodShare overpayment appeal (#FOP-173234) filed by Petitioner's mother. Those appeals are the subject of separate decisions to be issued at or about the time of this decision.

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner was sent an overpayment notice dated 2/19/16 that informed Petitioner that she had been overissued FoodShare in the amount of \$2759.00 for the period of 11/1/15 to 1/31/16. Claim # [REDACTED]
3. The reason for the alleged overissuance was the allegation that the ex-husband ([REDACTED]) of her mother was living in the home of Petitioner and her mother and his income was not reported. With that income the house hold was over the FoodShare income limit. As Petitioner turned age 18 on [REDACTED] (DOB [REDACTED]) and lived in the home she was determined by the agency to be a liable party.
4. The Decision for case # FOP-173234 concludes that there was no overpayment as alleged at Finding # 2.

DISCUSSION

The Federal Regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). *7 Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook, Appendix §7.3.2*. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, *7 CFR § 273.18(b)*; see also *FoodShare Wisconsin Handbook, App. 7.3.1.9*. Overpayments due to “client error” may be recovered for up to six years after discovery. *FoodShare Wisconsin Handbook, §7.3.2.1*. Further, all adult members of a household are jointly and severally liable for FoodShare overissuances. An adult is defined as anyone age 18 and over. *FSH, §7.3.1.2*.

In a separate decision, issued this same day for case # 173234 – the FoodShare overpayment case for Petitioner’s mother – I decided that [REDACTED] was not in the home for the period of 11/1/15 to 1/31/16 and reversed that overpayment. Thus this FoodShare overpayment for Petitioner is also reversed.

CONCLUSIONS OF LAW

That the overpayment claim for which this appeal was filed has been reversed in case # 173234.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to rescind FoodShare overpayment claim # [REDACTED] (\$2759.00 for the period of 11/1/15 to 1/31/16). This must be done within 10 days of the date 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, **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 11th day of August, 2016

\s _____
David D. Fleming
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 August 11, 2016.

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

