



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/143002

PRELIMINARY RECITALS

Pursuant to a petition filed August 11, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 20, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether respondent correctly determined that petitioner was overpaid FS benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Mary Hartung

Milwaukee County Department of Human Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and a recipient of FS benefits.
2. During the period in question, from September, 2011 through May, 2012, petitioner received FS benefits calculated on the basis of a two-person household. The reported membership of the

household was petitioner and her husband, [REDACTED] [REDACTED]. Petitioner reported no changes in the composition of her household from September, 2011 through May, 2012.

3. On July 16, 2012, the county agency issued a Notification of FS Overissuance establishing a claim against petitioner totaling \$1,835.00. The basis of the claim was petitioner's failure to accurately budget household members during the period of September, 2011 through May, 2012.
4. Petitioner's husband, [REDACTED] [REDACTED] has been incarcerated since December 16, 2010.

DISCUSSION

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). 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(a)(2).

The issue in this case is whether the county correctly determined that petitioner received FS benefits for a 2-person household, despite the fact that her husband was incarcerated. Petitioner did not contest that she failed to report his incarceration. The respondent provided testimony and documentation demonstrating that petitioner renewed her FS case and submitted Six Month Report Forms, and despite the opportunity to do so, never indicated that her husband was not living in the house. One SMRF, executed by the petitioner on January 30, 2012, specifically affirmatively states that [REDACTED] [REDACTED] is living in her household. Exhibit 3.

She explains that much of the information obtained from her during the overpayment period was obtained telephonically. Petitioner asserts that she does not recall ever being asked about her husband. Nevertheless, she concedes that he is incarcerated, and I also note that it appeared that her appeal was filed under her misconception that the respondent had found that *petitioner* was incarcerated. Respondent testified that it was never thought that petitioner was incarcerated, but that petitioner's husband's incarceration made him ineligible for benefits.

Petitioner did not contest the mathematics of the overpayment, and I have found no errors in respondent's calculations. As such, I conclude that the petitioner received benefits in excess of the amount that she actually qualified for, as a direct result of petitioner's failure to report her husband's incarceration.

CONCLUSIONS OF LAW

Petitioner was overpaid FS issued to her during the period of September, 2011, through May, 2012, as identified as Claim No. [REDACTED] in the amount of \$1,835.00.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be and hereby is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of October, 2012

Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee County Department of Human Services - email
Department of Health Services - email



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 2, 2012.

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