



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/143425

PRELIMINARY RECITALS

Pursuant to a petition filed August 25, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a telephonic hearing was held on October 24, 2012, at Janesville, Wisconsin. At the request of petitioner, a hearing set for September 19, 2012 was rescheduled.

The issue for determination is whether the county agency is correctly seeking recovery of a FoodShare (FS) overpayment to the petitioner of \$600 during the period of February 1, 2012 through April 30, 2012, due to his failure to timely report that he was incarcerated during that entire period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Mary Donahue, ES Supervisor
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. The petitioner received FS benefits for a household of one.

3. The petitioner was incarcerated in the Rock County jail as of December 23, 2011.
4. The petitioner and his POA failed to timely report petitioner's incarceration to the county agency.
5. On April 2, 2012, the county agency discovered that petitioner had been incarcerated without Huber Law privileges since December 23, 2011.
6. The county agency sent a July 12, 2012 Notification of FS Overissuance (Claim # [REDACTED] to petitioner informing that he was overissued \$600.00 in FS benefits from February 1, 2012 to April 30, 2012, due to failure of both petitioner and his POA to timely report to the county agency his incarceration in the county jail as of December 23, 2011.
7. The basis for the FS overpayment was that petitioner was ineligible for FS as an incarcerated person pursuant to the FoodShare Handbook, §3.2.1.2.2.
8. The remaining amount of petitioner's FS overpayment was \$600 as of the October 24, 2012 hearing date.

DISCUSSION

During the October 24, 2012 hearing and in its written argument and exhibits, the county agency representative met its burden of proof to clearly establish that the petitioner had received a FS overpayment during the period of February 1, 2012 through April 30, 2012 due to his incarceration in the Rock County jail as of December 23, 2011. The pertinent policy states:

3.2.1.2.2 Incarceration and Huber Law Prisoners.

“An individual who is incarcerated for more than 30 days is ineligible for FoodShare unless they meet all the Huber criteria listed below.”

FoodShare Wisconsin Handbook (FSWH), §3.2.1.2.2 at <http://www.emhandbooks.wisconsin.gov/fsh> .

The hearing record establishes that petitioner did not meet the Huber Law exception for 3.2.1.2.2.

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)(emphasis added).

In this case, the county agency proved by the preponderance of the evidence that the basis for the overpayment was client error. The county agency correctly determined that petitioner failed to timely report his incarceration to the county, and was ineligible for FS due to his incarceration. During the October 24, 2012 hearing, petitioner did not contest that he was incarcerated as of December 23, 2011 and failed to timely report that incarceration to the county agency.

The petitioner also did not contest that his FS household had received FS benefits during the period of February 1, 2012 to April, 2012. Furthermore, the petitioner was unable to offer any reliable evidence to refute the accuracy of the county agency's FS overpayment determinations. The petitioner basically stipulated that the FS overpayment action against him was correct. In any case, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: "The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . ." 7 C.F.R. § 273.18(a); see also

FoodShare Wisconsin Handbook, Appendices 7.3.1.9 and 7.3.1.1. Accordingly, for the above reasons, I must conclude that petitioner was overissued FS benefits of \$600 during the period of February 1, 2012 through April 30, 2012, due to his failure to timely and report that he was incarcerated during that entire period and thus ineligible for FS benefits.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a FoodShare (FS) overpayment to the petitioner of \$600 during the period of February 1, 2012 through April 30, 2012, due to his failure to timely and report that he was incarcerated during that entire period and thus ineligible for FS benefits per FoodShare Handbook, §3.2.1.2.2.

THEREFORE, it is **ORDERED**

The petition for review herein be and the same is hereby 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 served and 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, 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 23rd day of November, 2012

\sGary M. Wolkstein
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 November 23, 2012.

Rock County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability