



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/144279

PRELIMINARY RECITALS

Pursuant to a petition filed October 01, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on October 31, 2012, at La Crosse, Wisconsin.

The issue for determination is whether the county agency met its burden of proof to establish that it is correctly and accurately seeking recovery of FS overpayments to the petitioner during the entire period of June 6, 2012 to July 31, 2012, due allegedly to petitioner's failure to report that two children were no longer residing in his household as a FS group of three.

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: Tom Miller, ES Supervisor

La Crosse County Department of Human Services

300 N. 4th Street

PO Box 4002

La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. During early 2012, the two children of a friend ([REDACTED]) resided with the petitioner in his home due to financial problems of their mother.
3. On June 6, 2012, the petitioner applied for FoodShare (FS) benefits for a household of three (petitioner and the two children of his friend).
4. The county agency sent a June 11, 2012 notice to the petitioner approving him for FS benefits of \$438 for June, 2012, and \$474 for July, 2012 for a FS household of three.
5. The La Crosse county agency sent an August 23, 2012 Notice of Food Stamp Overissuance to the petitioner stating that he had received \$598.00 in FS overissuances in Claim # [REDACTED] during the period of June 6, 2012 to July 31, 2012, due to petitioner's alleged failure to report accurate household composition (that he was a FS group of 1 and not 3).
6. The basis for the FS overpayment was the allegation that the two children in question were no longer residing with petitioner as of his June 6, 2012 FS application date.
7. During the hearing, the mother of the two children testified that her two children resided with the petitioner until about July 22, 2012 at which time they returned to reside with her.
8. The county representative at the hearing was unable to establish with any reliable, non-hearsay evidence that the two children left the petitioner's residence prior to his June 6, 2012 FS application.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS 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 C.F.R. § 273.18(b), emphasis added; see also FoodShare Wisconsin Handbook, Appendix 7.3.1.9.

In a Fair Hearing concerning the propriety of an overpayment determination, **the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case.** The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In this case, as indicated in the above Findings of Fact, the county representative did not have any reliable, non-hearsay evidence to establish that the two children in question left the petitioner's residence prior to his June 6, 2012 FS application for a FS household of three. The county representative was unable to establish contact with O'Brien and Associates in order for their investigator to testify during the hearing. O'Brien and Associates did submit a brief investigative report, but that report was entirely hearsay, and the accuracy of that report was disputed by petitioner and the mother of the two children. As a result, the county agency did not establish that it is correctly seeking recovery of FS overpayments to the petitioner during the entire period of June 6, 2012 to July 31, 2012 because petitioner's FS household was only the petitioner (without the two children as a part of his FS group).

On the other hand, petitioner presented credible testimony that his friend's two children did reside with him during the period of June 6, 2012 until about July 22, 2012. More importantly, his friend, [REDACTED], testified under oath that her two children did reside with the petitioner prior to June 6, 2012 and continued in his residence until about July 22, 2012. The county representative present at the hearing

was unable to provide any reliable evidence to refute the testimony of Ms. [REDACTED]. Furthermore, the county agency was only able to provide hearsay evidence to support the allegation that the two children left the petitioner's residence during May, 2012. Based upon this hearing record, I must conclude that the agency has not established by the preponderance of the evidence that the county agency met its burden of proof to establish that it is correctly seeking recovery of FS overpayments to the petitioner during the entire period of June 6, 2012 to July 31, 2012, due allegedly to petitioner's incorrectly receiving FS benefits for a household of three instead of one. However, the county agency is correct to be pursuing the FS overpayment for the period of July 22, 2012 to July 31, 2012. Accordingly, based upon the above, I conclude that the county agency's FS overpayment determinations must in part be rescinded for the period of June 6, 2012 to July 22, 2012; and in part re-calculated as a new and brief FS overpayment solely for the period of July 22, 2012 to July 31, 2012.

CONCLUSIONS OF LAW

1. The county agency has failed to meet its burden of proof to establish by a preponderance of the evidence that the petitioner was overissued FoodShare benefits during the period of June 6, 2012 to July 22, 2012.
2. The county agency is correctly seeking a FS overpayment for the period of July 22, 2012 to July 31, 2012, due to petitioner receiving FS for a group of three when petitioner's FS group for that period was only one person.

THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to: a) rescind and reverse FS overpayment Claim # [REDACTED] made against the petitioner for the total FS overpayment period of period of June 6, 2012 to July 22, 2012; b) recalculate the petitioner's FS overpayment solely for the period of July 22, 2012 to July 31, 2012 based upon Conclusion of Law #2 above; and c) issue to the petitioner a new FS overpayment notice for the period of July 22, 2012 to July 31, 2012 based upon Conclusion of Law #2 above. These actions shall be completed within 10 days of the date of this Decision.

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 28th 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 28, 2012.

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