



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/142657

PRELIMINARY RECITALS

Pursuant to a petition filed July 27, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on May 16, 2013, at Madison, Wisconsin. Hearings set for August 30, September 27, and October 30, 2012 were rescheduled at the petitioner's request. In addition the hearing was postponed six months by agreement of the parties to allow petitioner to provided information.

The issue for determination is whether the county correctly determined an FS overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Asst. Corp. Counsel Marcia MacKenzie
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner has received FS for his six-person family from May, 2006 through September, 2011. The family reported minimal self-employment income over the time period. In September, 2011,

- the county worker requested an investigation because the family's monthly expenses exceeded income by substantial amounts and had done so over the entire period of eligibility.
3. The worker also requested that petitioner and his wife provide copies of bank and business records for the prior twelve months. Bank statements and PayPal records were provided on September 27, 2011 and they showed income to be substantially higher than what was reported by the household.
 4. On March 16, 2012 the county requested PayPal and bank account information from February 1, 2008 through August 31, 2010. Exhibit D, page 21. PayPal was requested because the self-employment business utilized PayPal for customer payments. No records were provided to the county.
 5. On April 19, 2012, the county sent the household another letter asking for similar records back to May 1, 2006. Exhibit D, page 22. A follow-up letter was mailed on May 17, 2012. No documentation was provided.
 6. In June, 2012, the county calculated BadgerCare Plus and FS overpayments. Using the PayPal records provided on September 27, 2011 that showed payments made by customers, the county determined that the household was overpaid \$9,062 in FS in 2010 and \$6,972 in 2011. The county worker took PayPal income deposits, totaled them for the year, then took the deductions from petitioner's tax returns to determine yearly net income, and finally divided by twelve to get monthly income.
 7. Because no records were provided for 2006 through 2009 the county determined that all FS issued must be considered overpaid.
 8. Notices of the overpayments were mailed on June 18, 2012. The total FS overpayment was \$50,123 for the period May 1, 2006 through September 30, 2011. See Exhibit A, page 2 for a list of the overpayment claims; the overpayments are separated into time periods with different claim numbers.
 9. Petitioner appealed the overpayment timely. In negotiations with petitioner's attorney and later with petitioner after the attorney left the case county representatives continued to request account information for the period May 1, 2006 through August, 2010. No additional information was received except for amended tax returns without supporting documentation. The amended returns were not filed with the IRS.
 10. The family did provide verification of mortgage and tax payments made, but it did not provide PayPal or bank account verification for the years in question.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). 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(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

The current monthly FS limits for a six-person household are \$5,162 gross and \$2,581 net. Handbook, App. 8.1.1. A check of the history on the Handbook website shows that the net income limit in 2006 was \$2,234.

For 2010 and 2011, using the best evidence available, the county determined that the household was overpaid some \$15,000 in FS. Petitioner did not contest that finding in any manner during the hearing.

The issue then is whether the agency can claim that all FS issued to the family from 2006 through 2009 can be considered an overpayment because the family has not provided account information for that period. Petitioner argued that the request was onerous and would result in expensive copying expenses. That argument is weakened by two factors. First, petitioner was able to provide the information for 2010 and 2011 within days after it was requested by the county worker. Second, the records provided for those two years show without question that the family substantially under-reported income to the county, and thus the agency has every reason to believe that records for the prior four years also would show substantial under-reporting.

After weighing the possibilities both ways, in the end I conclude that the county correctly established the overpayment based upon the information provided. Petitioner's response consisted of two claims. First, he argued that the family turned over everything requested. It is evident, however, that they did not. While it is true that they offered to allow the agency to review their PayPal account online, that is not the same as providing the records (and also is apparently unlawful for reasons that were not disputed).

Second, he cited Exhibit G as the self-employment net income over the years. However, I cannot say that petitioner's records or the tax returns are credible because the income is substantially less than the PayPal income shown in 2010 and 2011. At no time during the hearing did petitioner even attempt to show that the county's calculations of overpayments for 2010 or 2011 were erroneous. If those net incomes were inflated by the county, petitioner could have shown where mistakes were made by the county. He did not even attempt to do so. With that in mind, I have no way of knowing if the net incomes shown by petitioner from the prior years were accurate. Without any business records from those years, the county had no choice but to assume that all FS issued were done so erroneously. I thus must conclude that the FS overpayment of some \$50,000 was determined correctly.

Finally, petitioner testified that the family turned records over to their attorney and that HE failed to turn the records over to the county. First, they had months to turn over the records before they had an attorney and they did not do so. Second, Atty. Menendez ceased representation two months before the hearing and returned all records to petitioner. Agency personnel were willing to review records right up to the date of the hearing. The failure to turn over the requested records falls squarely on petitioner and his wife.

CONCLUSIONS OF LAW

The county correctly determined FS overpayments from 2006 through 2011 based upon 2010-2011 income information provided by petitioner and based upon the failure to provide income information for the years prior to 2010.

THEREFORE, it is

ORDERED

That 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 29th day of May, 2013

\sBrian C. Schneider
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 29, 2013.

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