



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/144845

PRELIMINARY RECITALS

Pursuant to a petition filed October 29, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Vernon County Human Services in regard to FoodShare benefits (FS), a hearing was held on December 28, 2012, at Viroqua, Wisconsin.

The issue for determination is whether the Department erred in its determination of a total claim of FoodShare overpayments of \$9,845 for the period from 1/1/06 to 3/31/12.

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: Sarah Larson

Vernon County Human Services
318 Fairlane Drive, Suite 100
Viroqua, WI 54665-6131

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Vernon County.
2. The Department seeks repayment of overissued FS benefits as follows:
 - a. Claim [REDACTED] \$2,492

- b. Claim [REDACTED] \$2,653
 - c. Claim [REDACTED] \$972
 - d. Claim [REDACTED] \$1,909
 - e. Claim [REDACTED] \$1,819
3. During the period from 1/1/06 to 3/31/12, petitioner received FoodShare benefits. Her residence was on [REDACTED] Wisconsin. During that period petitioner was married to [REDACTED]. The FS budget did not reflect that [REDACTED] lived in the home as petitioner reported that he lived outside of the home.
 4. In 2006 the FS household included petitioner and two minor children TK and MK. In June 2006 HA, a child was born. HA's father is [REDACTED]
 5. During the time period pertinent to this appeal, [REDACTED] left during the week to go to work. Most or all of this time the work was in Illinois. He would always return to the family home on weekends. When he was away during the week, he would stay in hotels near his work, or with relatives.
 6. [REDACTED] listed the [REDACTED] address as his residence address on tax returns and other official forms during this time period.
 7. During the period pertinent to this appeal, [REDACTED] paid all household-related expenses including housing costs, food, utilities, and family expenses.
 8. During the period, [REDACTED] income exceeded FS limits and would have made the household ineligible for FS.
 9. On May 21, 2012, the circuit court in Vernon County issued an order finalizing a divorce of petitioner and [REDACTED]. The marital settlement agreement specifically states that [REDACTED] will continue living in the home with petitioner and their child in common.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

Petitioner's primary argument is that the income for [REDACTED] should not be counted toward the household because he did not live in the household. Petitioner maintains that [REDACTED] lived outside the home.

According to the *FoodShare Wisconsin Handbook*, spouses and parents of children under 22 years must be considered part of the food unit, even if they do not purchase and prepare food with the rest of the group. *FS Wisconsin Handbook* § 3.3.1.3. Furthermore, a person is only temporarily absent from a household if they are absent for less than two months and intend to return. [REDACTED] made clear in an interview with Sergeant Stuber of the Westby PD (see exhibit #1) that he always intended to return to the home when he went to work during the week.

I understand the argument of the petitioner, that she felt that the marriage was challenging and that the two were not operating as an integrated family. It does not matter though because even petitioner concedes to the facts set forth in the findings of fact. Even under the facts as petitioner concedes, [REDACTED] must be counted as part of the household.

The petitioner expressed some concerns about the agency's calculations as related to counting depreciation. Income includes the "gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business..." 7 CFR §273.9(b). Allowable costs are listed in 7 CFR § 273.11(b)(1), which states:

Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor; stock; raw material, seed and fertilizer; payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods; interest paid to purchase income-producing property; insurance premiums; and taxes paid on income-producing property.

Depreciation is not an allowable cost of doing business. 7 CFR § 273.11(b)(2).

These rules require an agency to count all earnings from the business, even if the recipient elected not to take all of those earnings. The rules also mean that depreciation must be added back into his income. The Department has adequately established that the FS overissuance calculation is correct. Petitioner did not offer any rebuttal of the calculation.

CONCLUSIONS OF LAW

Petitioner was overissued FS in the amount of \$9,845 for the period from 1/1/06 to 3/31/12.

THEREFORE, it is **ORDERED**

That this appeal 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 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 17th day of January, 2013

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 17, 2013.

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