



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/145851

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services (MES) in regard to FoodShare benefits (FS), a telephonic hearing was held on January 08, 2013, at Milwaukee, Wisconsin. At the request of the parties, the record was held open for two weeks for: a) Mr. [REDACTED] to submit to MES completed self-employment forms or tax returns to verify his income; and b) MES to submit a response and Mr. [REDACTED]'s pay stubs to the Division of Hearings and Appeals (DHA). MES representative, Sharon Thacker, sent a January 17, 2013 letter to DHA indicating that: a) petitioner and Mr. [REDACTED] failed to submit any SEIRFS or tax returns regarding Mr. [REDACTED]'s income during the overpayment periods in question; and b) Mr. [REDACTED] does not file tax returns because he does not want to pay child support.

The issue for determination is whether Milwaukee Enrollment Services is correctly seeking recovery of FoodShare (FS) overpayments to the petitioner during the periods of January 1, 2006 to November 30, 2006 and August 15, 2011 to December 31, 2012, due to petitioner's failure/refusal to report or timely verify all income from [REDACTED] [REDACTED] resulting in total overpayment amount of \$19,557.00

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: Sharon Thacker, HSPC senior

Milwaukee Enrollment Services

1220 W Vliet St

Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resides with her boyfriend, [REDACTED] [REDACTED] and her five children. Mr. [REDACTED] is the father of three of petitioner's children.
2. The petitioner received FoodShare (FS) during the period of January, 2006 through November, 2006; and then resumed receiving FS benefits from September, 2011 through December, 2012.
3. Mr. [REDACTED] was an employee/owner of the Milwaukee Company, [REDACTED] [REDACTED] during the periods relevant to this FS overpayment case. That company was registered on February 6, 2006 under the registered agent, [REDACTED] [REDACTED]. The company was administratively dissolved due to the company's delinquent payments to the State of Wisconsin and [REDACTED]. Mr. [REDACTED] received self-employment and other possible income from that business.
4. The petitioner failed to submit any income verification regarding Mr. [REDACTED] until about August, 2011. At that time, petitioner began submitting his paystubs which upon investigation appeared be questionable and unreliable when compared to his year to date earnings statements.
5. Mr. [REDACTED] was unable to provide any evidence that he had timely filed any tax returns (including reporting his earned income) to the Internal Revenue Service (IRS) during the FS overpayment periods.
6. Neither the petitioner nor Mr. [REDACTED] timely submitted Self Employment Income Report (SEIRFs) to Milwaukee Enrollment Services despite MES sending those blank SEIRF forms to the petitioner.
7. The petitioner significantly under-reported Mr. [REDACTED]'s earned income to MES by only reporting odd jobs or part-time work.
8. Milwaukee Enrollment Services sent a December 5, 2012 FS Overissuance Notice to the petitioner stating that petitioner received an overpayment of \$1,484 during the period of January 1, 2006 to [REDACTED] 30, 2006, due to petitioner failure to timely report earned income.
9. Milwaukee Enrollment Services sent a December 5, 2012 FS Overissuance Notice to the petitioner stating that petitioner received an overpayment of \$3,233 during the period of June 16, 2006 to November 30, 2006, due to petitioner failure to timely report earned income.
10. Milwaukee Enrollment Services sent a December 5, 2012 FS Overissuance Notice to the petitioner stating that petitioner received an overpayment of \$9,934 during the period of August 15, 2011 to July 31, 2012, due to petitioner failure to timely report earned income.
11. Milwaukee Enrollment Services sent a December 5, 2012 FS Overissuance Notice to the petitioner stating that petitioner received an overpayment of \$4,906 during the period of August 1, 2012 to December 31, 2012, due to petitioner failure to timely report earned income.
12. The petitioner's total FS overpayment amount is \$19,557.00.
13. During the January 8, 2013 hearing, the testimony of both petitioner and Mr. [REDACTED] was generally not credible, consistent or reliable in regard to the FS overpayment issues in this case.

DISCUSSION

All FS applicants and recipients have a duty to accurately and truthfully report income to the county agency. 7 C.F.R. §273.12, "Reporting requirements." Furthermore, a FS recipient has the duty to cooperate in provide accurate and true income information on both his/her FS application and during later reviews. The FS recipient is also required to cooperate with the county agency in verifying all household income in order for the county agency to accurately determine a FS application or recipient's FS eligibility and benefits. 7 C.F.R. §273.2(d), "Household cooperation." As explained in the above Findings of Fact, petitioner failed and refused to accurately and truthfully report Mr. ██████'s self-employment income, and refused to cooperate with the county agency in reliably verifying her household's income was below the FS income limit for her FS household during the two overpayment periods of January 1, 2006 to November 30, 2006 and August 15, 2011 to December 31, 2012.

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, Milwaukee Enrollment Services (MES) proved by the preponderance of the evidence that the basis for the overpayment was clearly client error. During the January 8, 2013 hearing, petitioner and ██████ attempted unconvincingly, and without any reliable evidence, to deny her ongoing failure to report her accurate household income. The petitioner alleged that Mr. ██████ was not residing in Wisconsin during some indefinite period, but provided no reliable evidence of such residence. The petitioner also alleged that she had provided the requested verification, but had no evidence to corroborate that she had provided accurate income verification regarding her household income during the overpayment periods. The testimony of petitioner and ██████ was simply not credible.

The MES representative presented evidence that despite the income verification requests, petitioner failed or refused to provide reliable evidence in order for MES to determine her FS income eligibility during the two overpayment periods. The petitioner was also unable to refute that she under-reported Mr. ██████'s income during the overpayment periods. Mr. ██████'s excuse that he did not file tax returns violated federal law requiring him to have submitted timely tax returns to the IRS. As a result, MES based upon inaccurate information found the petitioner's household income ineligible for FS benefits during the overpayment periods.

This Administrative Law Judge (ALJ) wanted to provide every opportunity for the petitioner to provide clear, reliable documentation of Mr. ██████'s total income by holding the record open for petitioner to submit to MES such verification. As indicated in the above Preliminary Recitals, MES representative, Sharon Thacker, sent a January 17, 2013 letter to DHA indicating that: a) petitioner and Mr. ██████ failed to submit any SEIRFS or tax returns regarding Mr. ██████'s income during the overpayment periods in question; and b) Mr. ██████ does not file tax returns because he does not want to pay child support.

As petitioner refused to provide reliable income verification, MES had no choice but to consider the full amount of her FS benefits to be an overpayment based upon the assumption that petitioner's household was above the FS income eligibility limit for the entire FS overpayment period. The hearing record is clear that petitioner by her actions has failed or refused to provide the requested verification. There is a negative inference that can be taken that if a party refuses to provide required, relevant information, it can be presumed that such evidence will have a negative impact on that party's case. In this case, given the unusual circumstances of this case, there is no alternative but to conclude that the petitioner's total household income was above the FS income eligibility limit for the entire FS overpayment period of January 1, 2006 to November 30, 2006 and August 15, 2011 to December 31, 2012.

The petitioner did not contest that her FS household had received FS benefits during the period of January 1, 2006 to November 30, 2006 and August 15, 2011 to December 31, 2012. Furthermore, the petitioner was unable to offer any reliable evidence to refute MES' FS overpayment case. Nevertheless, petitioner contended that it was unfair that the county agency was seeking to recover the FS overpayment. However, 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 conclude that Milwaukee Enrollment Services is correctly seeking recovery of FoodShare (FS) overpayments to the petitioner during the total period of January 1, 2006 to November 30, 2006 and August 15, 2011 to December 31, 2012 in the total amount of \$19,557.00, due to petitioner's ongoing failure to report her rental income and failure/refusal to verify Mr. [REDACTED]'s income and total household income which should have been included in her FS eligibility and benefit determinations.

CONCLUSIONS OF LAW

Milwaukee Enrollment Services (MES) is correctly seeking recovery of FoodShare (FS) overpayments in the total amount of \$19,557.00 to the petitioner during the period of January 1, 2006 to November 30, 2006 and August 15, 2011 to December 31, 2012, due to petitioner's failure/refusal to report or timely verify Mr. [REDACTED]'s income during that entire period to establish that her FS household's income was below the FS income eligibility limit during the entire FS overpayment period.

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 22nd day of February, 2013

\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 February 22, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability