



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/146044

PRELIMINARY RECITALS

Pursuant to a petition filed December 17, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Manitowoc County Department of Human Services in regards to an overpayment of FoodShare benefits (FS), a telephone hearing was held on February 28, 2013, at Manitowoc, Wisconsin. A prior hearing set for January 30, 2013, was rescheduled at the petitioner's request.

The issue for determination is whether the county agency correctly determined that the petitioner was overpaid \$1,706 during the period of January 1 – December 31, 2012, because her husband was living with her and he had income that had not been budgeted by the county agency.

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: Tammy Hammerschmidt, Income Maintenance Worker
Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County. In the period of January – December, 2012, the petitioner was receiving FS as a household of one person, of \$151 per month in the entire period.

2. During the entire period described in Finding of Fact #1, above, the petitioner's erstwhile estranged husband, ██████████ was in fact living in the same residence with the petitioner. In addition, the petitioner's daughter, age unknown, and her three minor children also lived in the same residence. These people formed three separate FS groups, two singleton households and one household with the daughter and her minors.
3. On December 13, 2012, the Manitowoc County agency issued a Notification of Food Share Overissuance and Worksheets to the petitioner, informing her that the agency had determined that she had been overpaid \$1,706 in Food Share benefits from January 1 – December 31, 2012, because she had failed to report household members accurately, due to client error.
4. On December 17, 2012, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the overpayment determination of December 13, 2012, described in Finding of Fact #3.
5. Separately, for reasons unknown, the county agency also issued an overpayment determination against ██████████ for the same period of time asserting that he was overpaid \$332 as a separate FS household.

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 § 7.3.9.1. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FoodShare Wisconsin Handbook, App. § 7.3.9.1.

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.

The agency representative provided a copy of the Notice and Worksheet demonstrating the raw computation of the actual benefit issuance, but not the computation of the budget with ██████████ added to generate the overpayment alleged here. See, Exhibits #1.

The petitioner fully conceded that ██████████ moved back in with her in mid-January, 2012, and stayed throughout the rest of 2012. She also asserted that she had fully reported his return to her worker.

I have reviewed the computations of the overpayment and I find the agency erred. ██████████ and ██████████ must be combined in one household for the period of January – December, 2012, and *both* of their income streams must be counted in the budget. A manual computation worksheet may be necessary to capture both allotment streams as well. The computations presented here are woefully inadequate to make sense of the extent of the overpayment here. I am convinced that overpayment occurred, but the use of two separate sets of worksheets and the existence of two allotment streams has made a factual “hash” of the county's case. The agency may also need to ensure that other persons living in this household were not required to be in the petitioner's household. See, 7 C.F.R. § 273.1(b)(1)(ii). The daughter's age is a critical fact in such a determination, and that is not known in this record. A child 22 or under is also drawn into the parents' household when living with a parent or parents.

The matter is remanded to the agency to review and re-determine the liability of any and all household members in the period of January – December, 2012, rescind the claim for \$1,607 found on December 13,

2012, and issue an amended Notification of FS Overissuance to all liable household members, *using a manual worksheet if necessary.*

CONCLUSIONS OF LAW

- 1) That the county agency correctly determined that [REDACTED] and [REDACTED] were living in the same household in the period of January – December, 2012, and that they were married in that time period and required to be in the same household for FS purposes.
- 2) That the county agency incorrectly determined that the petitioner was overpaid \$1,706 of FS in January - December, 2012, because [REDACTED] [REDACTED]'s income and deductions, if any, were not included in the computations; nor were his separate allotments considered in the overpayment calculations.
- 3) That the couple are jointly and severally liable if the household that both were living in was overpaid; the matter must be remanded for review and re-determination of whether FS was overpaid to the household in 2012.

THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to: rescind FS overpayment Claim # [REDACTED] entered against the petitioner *as to the amount of \$1,706, only*; review and re-determine the household's FS eligibility for all of 2012 calendar year as if [REDACTED] and [REDACTED] were in the same household, including any other mandatory household members if any; and issue an Amended Notification of FS Overissuance and Worksheets *if and only if* the household was found overpaid on re-determination. 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 5th day of March, 2013

\sKenneth D. Duren, Assistant Administrator
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 March 5, 2013.

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