



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/146745

PRELIMINARY RECITALS

Pursuant to a petition filed January 22, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Waushara County Human Services in regard to FoodShare benefits (FS), a hearing was held on April 22 and May 23, 2013, at Wautoma, Wisconsin.

The issue for determination is whether the Department erred in its determination that petitioner was overissued FoodShare in the amount of \$7,347.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Eva Shiffrin
131 West Wilson Street Suite 700
Madison, WI 53203

Respondent:

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

By: Roxann Binkowski
Waushara County Human Services
213 W. Park Street
PO Box 1230
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waushara County.

2. Petitioner applied for FS in December 2010. FS was opened and budgeted without household income of [REDACTED] (husband).
3. Petitioner and [REDACTED] have children and grandchildren in common.
4. During the period pertinent to this appeal, petitioner lived at the home on [REDACTED] [REDACTED]. The home is owned by [REDACTED]. [REDACTED] paid the mortgage and other bills. The couple shared a joint bank account. Petitioner's income was deposited into the joint account. Petitioner's husband spent several nights per week at the [REDACTED] [REDACTED] house and several nights per week at a room he rented at a mobile home in Appleton. Petitioner worked in Appleton where he earned between \$1,770 and \$1,810 in wages biweekly.
5. In July 2012 petitioner applied for the QMB medical assistance program. On that application, petitioner reported that she had a joint checking account with [REDACTED]. The agency investigated and determined that [REDACTED] had income and was reporting the [REDACTED] [REDACTED] address as his home address for unemployment benefit purposes.
6. From approximately July 6, 2012 until approximately July 12, 2012, private investigator [REDACTED] [REDACTED] conducted an investigation under contract with the county agency.
7. Petitioner lost his job in Appleton in June 2012. From that time he began spending more time at the home on [REDACTED]. He presently resides full-time on [REDACTED] [REDACTED].
8. The Department issued a Notification of FS Overissuance on December 3, 2012.
9. Petitioner filed a timely request for hearing.

DISCUSSION

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).

Generally, all income received by a household must be budgeted unless it is specifically excluded by law. 7 C.F.R. §273.9(b). The FS Handbook, Appendix 4.3.1, directly addresses the issue in this case:

Income of a non-food unit member is not budgeted as income for the food unit. This is true whether the income is earned or unearned. **If the income of a non-food unit member is directly deposited into an account jointly owned by a food unit member, it is counted as unearned income for the food group.**

(Emphasis added).

In this case the income of petitioner's husband was deposited into a joint account owned with petitioner. It is undisputed that the couple shared this account during the entire period of the overpayment. Petitioner does not believe that application of this rule is appropriate. Petitioner argued at the time of the hearing on April 22 that this specific provision only applies when the two people sharing the joint account are part of the same household. This argument fails. The example in the Handbook following this rule is:

Example 1: Sam and Betty are receiving FoodShare benefits. Sam is a reservist in the army and has been called to active duty in a noncombat zone. He will be living away from Betty. He will now receive army pay which will be direct deposited into a joint account that Sam and Betty share. Sam's income will be budgeted as unearned income to the food unit.

The Handbook provision requires the income to be budgeted as unearned income for the FS group. The provision regarding the joint account clearly deals with a situation in which one person is living away from the food-unit members, which is what petitioner argues was the case here. I need not decide, for the purposes of this case, whether the two were living together or apart during the pertinent times of this overissuance as the joint account means that the income must be considered unearned income to the FS household.

At the time of the hearing on May 23, petitioner argued that the application forms were flawed and any error in reporting income into the joint account was not petitioner's fault. Petitioner expressed her hope that the agency would forgive any claim based on this argument. The specific argument, as stated by counsel, was that "when [REDACTED] applied for these two programs, BC+ and FS, both of those programs do not have an asset test. And, therefore the applications themselves do not ask questions about resources." Counsel noted that petitioner did indicate the presence of assets in the form of the joint account in the 2012 application which asked about assets. But, I note that the "Registration for FS Wisconsin" which is part of exhibit #4 and was completed by petitioner on December 14, 2010 asks the petitioner to indicate "total gross income expected by your household this month." Petitioner only indicated \$226 which clearly does not include [REDACTED]'s wages deposited into the jointly owned account. And, the form specifically asks about "total available assets (examples – cash, money in checking/savings accounts...)" contrary to petitioner's argument. Petitioner indicated zero assets. I cannot agree that the form is flawed. Petitioner had joint access to that account balance. Petitioner should have included that information on the form.

Petitioner did not dispute the calculations of the Department or the total amount of the claimed overissuance. The Worksheet offered as exhibit #1 indicates that the income of [REDACTED] counted as part of the household placed the household above the gross income limit for every month of the overissuance period except for January 2011 in which there was a partial overissuance as reflected in the Worksheet. My review of the Worksheet, and the absence of any rebuttal, leads me to find that the overissuance claim was properly calculated.

CONCLUSIONS OF LAW

The Department did not err in its determination of the FS overissuance in the amount of \$7,347 for the period from 12/14/10 to 1/31/12.

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 10th day of July, 2013

\sJohn P. Tedesco
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 July 10, 2013.

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