



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/146756

PRELIMINARY RECITALS

Pursuant to a petition filed January 18, 2013, 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 February 20, 2013, at Milwaukee, Wisconsin. At the request of the parties, the record was held open until February 27, 2013 for a submission by MES, and then until March 6, 2013 for any response by petitioner to DHA. MES did submit some information to DHA. However, petitioner did not submit any response to DHA.

The issue for determination is whether Milwaukee Enrollment Services (MES) met its burden of proof to establish that it is correctly seeking recovery of a FoodShare (FS) overpayment to the petitioner during the period of January, 2010 through December, 2010, due to failure to timely report her husband and his income for a household of four.

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: Katherine May, HS PC 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 husband, [REDACTED] and their two children. There is some evidence that petitioner married [REDACTED] on June 8, 2011.
2. Milwaukee Enrollment Services established with credible reports (credit, municipal reports and home ownership) that petitioner's boyfriend and later husband, [REDACTED] resided with the petitioner during her overpayment period of January 1, 2010 through December, 2010.
3. Petitioner failed to report that [REDACTED] resided with her in her FS housed during the period of January 1, 2010 through December, 2010.
4. The petitioner was approved for FS benefits for a FS household of three during the FS overpayment period, when she and Mr. [REDACTED] had been a FS group of four.
5. MES discovered that petitioner's husband resided in her home, and that his alleged income had not been timely reported to MES.
6. MES discontinued the petitioner's FS case as of January 1, 2011.
7. MES failed to establish with any reliable evidence that Mr. [REDACTED] had any earned or unearned income during the period of January, 2010 through December, 2010.
8. On November 4, 2010, [REDACTED] applied for FS benefits for himself and three children. MES approved his FS benefits for November and December, 2010 for only Mr. [REDACTED] and his child [REDACTED] Jr. because he was included on petitioner's FS case. As of January, 2011, petitioner's children were added to Mr. [REDACTED]'s FS case.
9. During 2010, petitioner worked at [REDACTED] as an assembly/test worker. However, MES did not establish with any reliable evidence the specific amount of petitioner's earned income at [REDACTED] during each of the months of the FS overpayment period of January, 2010 through December, 2010 and that her income was above the FS gross and/or FS net income limits for a household of four.
10. On December 28, 2012, Milwaukee Enrollment Services (MES) sent a written Notification of FS Overissuance (Claim #1900370121) to petitioner alleging that she was overissued \$2,697.00 in FS benefits from January 1, 2010 to December 31, 2010, due to failure to report accurate household members ([REDACTED] in her home) and alleged income of Mr. [REDACTED].
11. In that December 28, 2010 notice, MES incorrectly indicated that the FS gross income limit for a household of four was \$2,389, when the actual gross income limit was \$3,676 during 2010.
12. During some of 2010, petitioner received monthly Unemployment Compensation (UC) benefits when she was not employed full time. However, the amount of petitioner's UC was not reliably established for each month in the relevant overpayment period.
13. The FS net income limit for a FS household of four was \$1,838.00 for the entire FS overpayment period.

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 7.3.1.9.

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.

In this case, as indicated in the above Findings of Fact, the MES representative had sufficient evidence to establish that Mr. ██████ resided with the petitioner in her FS household during the period of January, 2010 through December, 2010. However, MES did not have any reliable evidence to establish that Mr. ██████ had any earned or unearned income during the alleged FS overpayment period. In addition, MES had insufficient, reliable, non-hearsay evidence to confirm whether petitioner's income working at ██████ was above the FS gross and/or net income limit during each of the months of the alleged FS overpayment period for a household of four. In fact, many of the documents submitted by MES were for time periods not relevant to the FS overpayment period of 2010.

On the other hand, the petitioner's testimony was weak and not credible. She was unable to refute with any convincing evidence that ██████ ██████ did not reside with her during the 2010 FS overpayment period. She was unable to provide any lease, contract or any other document to establish that Mr. ██████ had his own residence during the overpayment period. Petitioner simply was unable to establish that she did not receive any FS overpayment during the entire year of 2010 due to household income above either the FS gross or net income limits.

However, due to the general lack of sufficient, reliable, relevant evidence, this ALJ is unable to determine the accurate amount of petitioner's FS overpayment for part or all of the alleged overpayment period. MES has not established by the preponderance of the evidence that the county agency met its burden of proof to establish that it is correctly seeking recovery of FS overpayments to the petitioner during the entire period of January, 2010 through December, 2010. Accordingly, based upon the above, I conclude that MES has failed to meet its burden of proof to establish that the petitioner was overissued FoodShare benefits during the period of January, 2010 through December, 2010, due to failure to timely report her husband and his income which resulted in household income above the 2010 gross income eligibility limits for a household of four.

CONCLUSIONS OF LAW

Milwaukee Enrollment Services (MES) has failed to meet its burden of proof to establish by a preponderance of the evidence that the petitioner was overissued FoodShare benefits during the period of January, 2010 through December, 2010, due to failure to timely report her husband and his income which resulted in household income above the 2010 gross income eligibility limits for a household of four.

THEREFORE, it is

ORDERED

The matter is remanded to MES to re-determine and re-calculate the petitioner's FS overpayment for some or all of the period of January, 2010 through December, 2010; and b) issue a new, updated FS overpayment notice to the petitioner explaining in detail how MES had determined any FS overpayment for a household of four due to household income above the FS gross or net income limit for some or all of the alleged overpayment period of January through December, 2010, 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 18th day of March, 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 March 18, 2013.

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