



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/146761

PRELIMINARY RECITALS

Pursuant to a petition filed January 19, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Clark County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 25, 2013, at Rhinelander, Wisconsin.

The issue for determination is whether the Department met its burden of establishing that there has been a FoodShare overissuance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Mr. Tom Miller

Clark County Department of Social Services
Courthouse
517 Court Street, Rm. 502
Neillsville, WI 54456-0190

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. Petitioner was a member of a FoodShare group with the case head being his cousin [REDACTED]. Petitioner was a member of the FS case from 11/1/08 until 9/30/09. During this period, [REDACTED] and petitioner lived together in a home with [REDACTED]'s parents. The FS eligibility was determined based on the understanding that the FS group purchased and prepared food separately from the other's in the household including [REDACTED]'s parents.
3. The Department conducted an investigation into an FS overissuance. Investigator [REDACTED] conducted the investigation and wrote a report. However, at the time of the hearing, Mr. [REDACTED] did not answer his telephone and did not testify. The written report concludes that petitioner lived with [REDACTED] and her parents and [REDACTED]'s brother during the period in question, and that the group purchased and prepared food together. At hearing, petitioner conceded this and, on that basis, I find it so.
4. The Department did not obtain income information of [REDACTED]'s parents or brother as part of the investigation.
5. The determined an overpayment on the basis that the petitioner was an adult living in the home during that period.
6. The Department issued a Notice of FS Overissuance against petitioner on January 30, 2013 in claim number [REDACTED] in the amount of 3817.00.
7. Petitioner filed a timely request for hearing.

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).

In this case, the Department determined that [REDACTED] and petitioner were purchasing and preparing food with other household members not on the FS case. Ms. Woxland is an investigator of O'Brien and Associates who is a contracted investigation firm. She testified at hearing. No one at O'Brien or the Department obtained income information of the other household members. Ms. Woxland simply determined that an overissuance occurred because [REDACTED] failed to provide accurate information relating to who in the household purchased and prepared food together. Ms. Woxland then determined that the overissuance amount was for the complete sum of FS issued during the period.

Ms. Woxland explained that "if we don't have income then we process a full overpayment on the case." When asked upon what basis in the law or administrative code O'Brien and Associates does so, Ms. Woxland clarified that "that's just the rulings of how we do overpayments...that's just the rules that we've always followed in doing overpayments." At hearing, the agency representative, Mr. Miller, also explained that if persons do not provide income information to the Department then "basically it's held against them...then we are going to budget more income than they should have gotten to be eligible for FoodShare."

At hearing, it is the burden of the Department to establish that a group "has received more FS than it was entitled to receive." See FoodShare Wisconsin Handbook § 7.3.1.1. This is a fundamental principle of an overissuance determination with its basis in the Federal Regulations as cited above. The Department cannot possibly determine what the group was entitled to receive without the

group's income information. The Department did not even offer any evidence that it sought such information by means of a request for verification or similar mechanism. After all, if the parents and brother were unemployed without income, then this would more properly have been a 5-person food group with no income that was eligible for much more FS than the group received. Similarly, if income fluctuated, there may have been some periods with an overissuance and others without. The speculation could be endless. But, the critical inquiry is whether the Department can establish that there has been an overissuance on the sole basis that the case head failed to provide the correct household composition. It cannot. **The Department has the burden to establish that a food group received more FS than it should have gotten.** The Department has not done so.

I provided Mr. Miller an additional period following the hearing to provide me with a citation or reference to a statute or rule that authorized the Department to calculate a complete overissuance based only on failure to report accurate household composition. Mr. Miller send a copy of FoodShare Handbook § 7.3.2.1. The reference did not include any explanation from Mr. Miller as to how it relates to this case and how it provides such authority. I have read that section. I do not find it to provide such authority. If the Department disagrees, it can certainly request a rehearing along with an explanation of why I have erred in that interpretation.

CONCLUSIONS OF LAW

The Department did not establish an overissuance of FS.

THEREFORE, it is **ORDERED**

That this matter is remanded to the Department and its county agent with instructions to cease all collection efforts relating to this overissuance claim against petitioner, and to reverse any determination of overissuance related to claim number [REDACTED]. These actions must be completed within 10 days.

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 7th day of May, 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 May 7, 2013.

Clark County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability