



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/146889

PRELIMINARY RECITALS

Pursuant to a petition filed January 23, 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 February 28, 2013, at Wautoma, Wisconsin.

The issue for determination is whether the Department erred in determining an overissuance of FoodShare from 7/1/11 to 10/31/12 in the amount of \$8,751.

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: 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, during the times pertinent to this appeal, was a recipient of FoodShare benefits.

3. Petitioner resided, at times pertinent to this appeal, on [REDACTED] in [REDACTED]. The home is owned by petitioner and her husband.
4. Petitioner is married to [REDACTED]. She filed for divorce in May 2011 but the divorce was never finalized. Since that time, petitioner has spent some of his time staying at a friend's mobile home. He has continued to reside on [REDACTED] for most of the time.
5. Petitioner underwent a review of her medical assistance case in July 2011. At that time she also applied for FoodShare. She reported herself and her two children in the home.
6. The agency conducted a telephone interview on July 26, 2011. Petitioner reported that her husband was not living in the home. She reported that she paid for all shelter and utility and other costs out of her own income. The Department budgeted no income to the household from [REDACTED].
7. [REDACTED] is a disabled veteran. He receives \$3,191 for his disability and an additional \$750 per month in social security. These funds are deposited directly into an account held by petitioner. It is not a joint account, but [REDACTED] has a debit card which he can use to spend money from petitioner's bank account.
8. In August 2012, petitioner suffered a back injury. Since that time, petitioner has spent even more time in the residence.
9. From 7/1/11 to 10/31/12 petitioner received FS benefits totaling \$8,751. If [REDACTED]'s income had been counted, the household would not have been eligible for any FS at all.
10. On December 14, 2012, the Department sent an overpayment notice to petitioner in the amount of \$3,070.72.
11. Petitioner filed a timely appeal.

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).

Petitioner's primary argument is that the income for [REDACTED] should not be counted toward the household because he did not live in the household. Petitioner maintains that [REDACTED] lived outside the home.

In this case, the agency asserts that the petitioner failed to report that [REDACTED] was living in the home and the household income he contributed, for the overpayment months. The petitioner does not challenge the agency's arithmetic, but does assert that [REDACTED] did not live in the home during the overpayment period.

[REDACTED] reported to the Department investigator that he spent half his time in the home from July 2011 until September 2012 and then increased frequency after petitioner had surgery in September 2012. [REDACTED], in contacts with the legal system at various times in 2012, reported his legal address to be the [REDACTED] address.

Petitioner testified that her husband was not in the home 50% of the time from July 2011 onward. She could not recall how often he was there but it was "not as often" as 50%. Similarly, she cross-examined the investigator regarding [REDACTED]'s and her reported statements that [REDACTED] was in the home approximately 50% of the time until August 2012. Petitioner was adamant that it was not 50% but could not estimate any other amount.

Later, on direct, petitioner admitted that [REDACTED] stayed over for a period of three months after her surgery on September 13, 2012. But, she testified that prior to that, he only came over to babysit. She specifically denied that [REDACTED] spent the night from July 2011 until her surgery in September 2012. This was contrary to what [REDACTED] reported to the Department investigator. And, it was contrary to what the investigator testified that petitioner told him. And it was contrary to her previous statements in which she stated she could not estimate how often he stayed over during this period.

[REDACTED] informed the Department investigator that his income is deposited into a joint account and that he pays all bills and pays child support. Petitioner testified that the account is not joint but is solely in her name. Petitioner showed the investigator the checking account documents which bears only petitioner's name.

Petitioner testified that prior to her surgery she filed for a temporary restraining order. She also testified that she has knowledge that [REDACTED] attempted to buy a gun during that time according to police reports to which she has access. She testified that she did not feel safe and therefore he would not have been staying with her. Nonetheless, after her surgery, she explains that petitioner came to stay to help out in the home. Petitioner was provided twenty days following the hearing in which to provide any documentation regarding these claims. No documentation was received by this ALJ.

Petitioner also explained that in addition to the restraining order and the attempted gun purchase which put her in fear, petitioner did not have [REDACTED] come to testify at the hearing because "he is a pathological liar in my book...The whole time we were married he was out for revenge all the time." She described his financial misrepresentations that cost her \$10,000 and described him as a "con artist." She then explained that his income is deposited in her account for her to then "monitor or supervise" because she is "the type of person who wants to help people. I want to help him to stop doing the bad habits that he has with...financial problems. I just want to be there to help him. It's just in my nature, I guess." She then explained that, despite the comingling of both their funds, she does not use any of his money.

I have rarely found a witness less credible than the petitioner in this case. I put no weight in her statements. Her testimony was unbelievable in much of its substance.

Petitioner has lived the majority of the time since 7/1/11 with petitioner. His income in excess of \$4,000 per month is deposited directly into an account owned and managed by petitioner. Yet, none of these funds were reported or budgeted.

The Department established its case and petitioner's attempt at rebuttal did not help her.

CONCLUSIONS OF LAW

The Department did not err in determining an overissuance of FS in the amount of \$8,751.

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 21st day of March, 2013

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on March 21, 2013.

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