



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/147033

PRELIMINARY RECITALS

Pursuant to a petition filed January 31, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Manitowoc County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 05, 2013, at Manitowoc, Wisconsin.

The issue for determination is whether the Department met its burden to establish by the preponderance of the evidence that petitioner is liable for a \$332 overissuance of FoodShare benefits.

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: Tammy Hammerschmidt

Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. Petitioner applied for FoodShare on September 8, 2011. On that application he indicated that he was separated from his spouse. He was issued FS based on that understood fact and was treated as a one-person household.
3. On 11/26/12, petitioner applied for medical assistance. On that application, he indicated that he is married.
4. The Department investigated the couple's living situation.
5. Petitioner and his wife began living together, after a separation, in January 2012. Petitioner's wife maintained her own open FS case during the separation and for a period of time after they moved in together again.
6. On 12/13/12, the Department issued FS Overissuance Notice to petitioner in claim number [REDACTED] in the amount of \$332.
7. 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).

According to the *FoodShare Wisconsin Handbook*, spouses and parents of children under 22 years must be considered part of the food unit, even if they do not purchase and prepare food with the rest of the group. *FS Wisconsin Handbook* § 3.3.1.3.

In a Fair Hearing concerning the propriety of an overpayment of benefits, such as this, the county agency has the burden of proof to establish that the action taken by the county was proper. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

At hearing, there appeared two representatives of the Department. Their witness was Mr. Jack Haldeman from contracted private investigation firm O'Brien and Associates. Mr. Haldeman is the overpayment expert and supposedly calculated the amounts of the overpayments in this case.

At the time of the hearing, the Department and Mr. Haldeman were unable to explain how the \$332 was calculated. Mr. Haldeman explained that an overissuance was calculated against petitioner's wife in the amount of \$1,706. Mr. Haldeman was utterly unable to explain, however, how he derived the \$332 figure against Mr. [REDACTED] or the \$1,706 against the wife. Mr. Haldeman admitted that he knew about the hearing yet, during the hearing, needed to review the documents in order to attempt to answer this fundamental question. Mr. Haldeman's testimony was disjointed and almost non-responsive. In the end, I could make no sense of his statements of how the number was reached. At one point, Mr. Haldeman stated that he was looking at the two cases in front of him "but if the worker has it in front of her, please go ahead because I am reviewing both cases here." Mr. Haldeman offered no information that was helpful for the Department and seemed entirely ill-prepared or unfamiliar with the case.

The Department then offered that the basis for the overpayment was that the income for the couple was too high. But, the Department could not explain whether it was a failure at the net income limit, or the gross income limit. Indeed, the Department had not presented any income information to that point. Neither Mr. Haldeman nor the Department could explain whether this was a situation of a complete overissuance, or one in which the Department only sought to recover a portion of what was paid. And, the Department did not explain why the recovery against the wife was so much higher than against petitioner.

Even the Department representatives appeared frustrated with O'Brien and Associates seeming unpreparedness. The Department representatives admitted that all they had was the worksheets completed by O'Brien and they were "struggling too." Mr. Haldeman then admitted that he did not have a copy of the worksheets in front of him.

The Department did not come close to meeting its burden in this case. Should the Department obtain new evidence it can certainly re-issue the overissuance action.

CONCLUSIONS OF LAW

The Department failed to meet its burden to support the FS overissuance of \$332.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and its county agent with instructions to cease any collection of the \$332 from petitioner and to reverse any agency finding of overissuance because the agency has not established that there was any overissuance of FS. 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 27th day of March, 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 March 27, 2013.

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