



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/147322

PRELIMINARY RECITALS

Pursuant to a petition filed February 14, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on March 13, 2013, by telephone.

The issue for determination is whether petitioner is liable for an FS overpayment made to her mother.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Sharon Thacker
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received FS in 2012 as part of her mother's FS group. Petitioner turned age 18 on January 14, 2012. When she turned 18 she was working part-time. Her mother did not report the job to the FS worker.
3. The agency discovered petitioner's job in late 2012 when it showed up on a state cross match. The agency used petitioner's income to determine how it would have affected FS in 2012. By a notice dated January 29, 2013, the agency informed petitioner's mother that she was overpaid

\$1,768 in FS from April 1 through September 30, 2012 because petitioner's income was not budgeted, claim no. 5900371595. Petitioner is listed as a liable person.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). 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(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

The key issue in this case is petitioner's income. The earned income of a student under age 18 is disregarded; once she turns 18 her income is counted even if she still is in school. 7 C.F.R. §273.9(c)(7); Handbook, App. 4.3.2.2.

Petitioner did not contest the calculations. I reviewed the calculations and found minor errors, but the result did not change. With petitioner's income added the household was over the FS net income limit during the six-month period at issue.

Petitioner's mother testified that she simply did not realize that she had to report petitioner's income. That is why the overpayment is called client error instead of fraud, but it does not mean that the overpayment can be overlooked. I must conclude that petitioner is liable for the overpaid FS because she was an adult member of the household when the overpayment occurred. I note that as long as her mother actively repays the overpayment it is unlikely that the agency will seek collection from petitioner.

CONCLUSIONS OF LAW

Petitioner is liable for an FS overpayment totaling \$1,768 in 2012 because the household failed to report her earned income.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 15th day of March, 2013

\sBrian C. Schneider
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 15, 2013.

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