



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

In the Matter of



DECISION

FOP/147568

PRELIMINARY RECITALS

Pursuant to a petition filed February 21, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Fond Du Lac County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 14, 2013, at Fond Du Lac, Wisconsin. At the request of the parties, the record was held open for the county's initial submission, the petitioner's responsive submission, and the county's reply statement to be submitted to DHA and the other party. Both parties timely submitted both of their statement to DHA which are received into the hearing record.

The issue for determination is whether the county agency was correctly and accurately seeking recovery of FoodShare (FS) overpayments to the petitioner during the total period of January 9, 2012 through December 31, 2012 in the amount of \$9,120, due to petitioner's failure to timely report to the county agency her accurate household composition (██████████ ██████████) and Mr. ██████████'s earned income which should have been included in her FS eligibility and benefit determinations.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Gena Miller, ESS

Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County who resides with her four children.
2. The petitioner has four children in common with her boyfriend, [REDACTED].
3. The petitioner received FoodShare (FS) benefits for a household of six (including Mr. [REDACTED]) during most of 2011, but that FS case closed as of November 2011 due to lack of review.
4. The petitioner applied for FoodShare and Medical Assistance as a single parent with her four children during January, 2012 stating that [REDACTED] was no longer residing in her household, and thus a FS group of five.
5. The petitioner received FoodShare (FS) benefits for the entire period of January, 2012 through December, 2012.
6. During her January 10, 2012 initial application interview process, her six month review form (SMRF) on June 4, 2012 and during her annual review on December 17, 2012 petitioner maintained both orally and in writing that she lived alone with her four minor children. Petitioner claimed that their father, [REDACTED], resided with her sister in a rental property owned by petitioner's parents.
7. During the hearing, neither petitioner nor [REDACTED] were able to provide any evidence that during the overpayment period [REDACTED] paid any monthly rent to his parent or had a lease or any other contract with his parents as a rental agreement.
8. Neither petitioner nor Mr. [REDACTED] were able to provide any receipt of any kind to establish that he paid any rent or utility bills during the period he was allegedly living with petitioner's sister at his parent's rental property.
9. Petitioner stipulated that [REDACTED] "returned" to reside with her in her home as of January 1, 2013.
10. Due to a "tip" on December 27, 2012 that [REDACTED] did reside in petitioner's household, the county agency began investigating whether the father of petitioner's four children ([REDACTED]) had been residing with petitioner at least as of January, 2012, and that his income had not been timely reported to the county agency. The case was referred to O'Brien and Associates to conduct an investigation.
11. Petitioner's brother, [REDACTED], clearly confirmed that [REDACTED] resided with the petitioner during the FS overpayment period of January through December, 2012. See January 13, 2013 O'Brien Investigative Report.
12. The petitioner works about 40 hours per week at the Fond du Lac Humane Society and earns \$7.25 per hour.
13. The amount of the petitioner's earned income is not disputed in this overpayment appeal.
14. [REDACTED] has been employed by [REDACTED] since August 23, 2010. He has worked about 40 hours per week (sometimes with additional overtime), and his current pay rate is about \$1,327 every two weeks.
15. [REDACTED] receives private employer health insurance through Anthem Blue Cross/Blue Shield from Saint Louis, Missouri.
16. [REDACTED]'s earned income was not included in determining petitioner's FS eligibility and benefits for the entire FS overpayment period of January, 2012 through December, 2012 creating petitioner's FS overpayment.

17. On January 18, 2013, the county agency sent a written Notification of FS Overissuance to petitioner informing that she was overissued \$9,120.00 in FS benefits from January 9, 2012 through December 31, 2012, due to petitioner's failure to report accurate household members (██████████ in her home) and Mr. ██████████'s earned income.
18. The FS gross income limit for a household of six was \$5,162 for the period of February, 2012 through December, 2012 (January, 2012 income limit was \$4,998.33) FoodShare Wisconsin Handbook, 8.1.1, "Income limits."
19. In the January 18, 2013 FS overpayment notice and attached worksheets, the overpayment worksheets erroneously stated on line #9 that the gross income limit for a household of six was \$3,249 for the period of April, 2013 through September, 2012; and then increased to \$3,356 for the period of October, 2012 through December, 2012. Those inaccurate statements of the income limits makes questionable the reliability of the calculation of petitioner's total FS overpayment amount for the period of January through December, 2012.

DISCUSSION

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). 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(a)(2)(emphasis added).

Those regulations also provide, in relevant part, as follows:

- (a) Establishing claims against households. All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR § 273.18. The FS Handbook similarly provides that an adult is a person who is 18 years old or older and a member of the food unit at the time the overpayment occurred is liable for repayment of any overissued FS benefits. FS Handbook § 7.3.1.2. All nonexempt income must be budgeted in determining FS. 7 C.F.R. § 273.9(b). As a result, petitioner and ██████████ were jointly and severally liable for this FS overpayment.

In this case, the county agency proved by the preponderance of the evidence that the basis for the overpayment was client error. The county agency correctly determined that ██████████ was part of the petitioner's food unit, and that his income had not been used to determine her FS eligibility and benefits which, in turn, gave rise to the FS overpayments during the period of January, 2012 through December, 2012. The county representative indicated that petitioner and Mr. ██████████ were incorrectly awarded \$9,120 in FS benefits because the total accurate income of petitioner and Mr. ██████████ would have either placed the household over the gross income limit or reduced her FS benefits during petitioner's FS overpayment period.

During the March 14, 2013 hearing, the petitioner and ██████████ testified with many explanations and excuses for why Mr. ██████████ allegedly did not live with her during the overpayment periods in question. Their testimony was not credible. The petitioner was unable to provide any reliable evidence to refute the county's case. During the testimony of petitioner, she alleged that ██████████ was residing with her sister in a rental property owned and managed by petitioner's parents. Petitioner admitted she was unable to

provide any evidence of any lease or contract of any kind for [REDACTED] [REDACTED] during the overpayment period. Furthermore, the testimony of petitioner and Mr. [REDACTED] appeared entirely unconvincing as both admitted they had no receipts or documents whatsoever to confirm any rental payment by [REDACTED] to her parents.

Overall, the petitioner presented a weak case and failed to undermine the county's FS and MA overpayment cases. During the March 14, 2013 hearing, petitioner was unable to present any reliable evidence to refute or undermine the county's testimony or evidence that [REDACTED] [REDACTED] resided with the petitioner and their children during the entire FS overpayment period. Therefore, Mr. [REDACTED]'s earned income must be budgeted as income in determining petitioner's FS eligibility and benefits.

The petitioner did not contest that her FS household had received FS benefits during the period of January, 2012 through December, 2012. Furthermore, the petitioner was unable to offer any reliable evidence to refute that the county agency was correctly pursuing FS overpayments of the petitioner. Nevertheless, petitioner contended that it was unfair that the county agency was seeking to recover the FS overpayment. However, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: "The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . ." 7 C.F.R. § 273.18(a); see also FoodShare Wisconsin Handbook, Appendices 7.3.1.9 and 7.3.1.1.

However, in reviewing the FS worksheets attached to the county's January 13, 2013, there were two significant errors on that worksheet. The first error was that throughout the FS overpayment worksheets, the county incorrectly stated the FS gross income limit for a household of six in the column for the "corrected budget" on line #9 of that worksheet. See Findings of Fact #18 and #19. Second, even though the county asserted that Mr. [REDACTED]'s earned income was essential to creating the petitioner's FS overpayment, that worksheet showed no increase in earned income (line #6) between the "actual" and "corrected" budgets for that worksheet. In one of its written arguments, the county explained that it placed Mr. [REDACTED]'s earned income in the "unearned" income line to avoid granting any earned income deduction due to petitioner's failure to report that income. However, even if that is the case, the issue of accuracy still remains because in looking at the alleged monthly FS overpayments (even using the "unearned income" line), the monthly overpayment appears to be the total FS monthly payment when in some months petitioner's total household income was not above the "correct" gross income eligibility limits of \$5,162.

Two such errors place into question the reliability of all of the computation on that FS overpayment worksheet which resulted in the alleged total overpayment of \$9,120.00. As a result, the FS overpayment was questionable in its accuracy and must be reviewed and corrected prior to the issuance of a new FS overpayment notice to the petitioner. The petitioner would then have the right to file a new appeal with DHA if she believes that the calculation of that new FS overpayment amount is inaccurate. However, this decision concludes that [REDACTED] [REDACTED] resided in the petitioner's home during the FS overpayment period of January through December, 2012, and that his income must be counted in determining the petitioner's FS eligibility and benefits during the period of January 9, 2012 through December, 31, 2012.

CONCLUSIONS OF LAW

1. The county agency correctly determined the petitioner's boyfriend, [REDACTED] [REDACTED], resided in the petitioner residence during the overpayment period of January 9, 2012 through December 31, 2012, and that petitioner failed to timely report [REDACTED] [REDACTED] in her residence and his income.

2. The county agency failed to establish with accurate and reliable information that it correctly and accurately calculated the petitioner's FS overpayment amount for the period of January 9, 2012 through December 31, 2012.
3. The county agency needs to re-calculate the petitioner's FS overpayment and send a new and corrected overpayment notice with detailed worksheets to confirm that it accurately determined the petitioner's total FS overpayment for a household of six (including Mr. [REDACTED]) during the period of January, 2012 through December, 2012.

THEREFORE, it is

ORDERED

The matter is remanded to the county agency with instructions to re-calculate the petitioner's FS overpayment and send a new and corrected overpayment notice with detailed worksheets to confirm that it accurately determined the petitioner's FS overpayment for a household of six (including Mr. [REDACTED]) during the period of January, 2012 through December, 2012, 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 9th day of May, 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 May 9, 2013.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability