



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/147575

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on April 10, 2013, at Milwaukee, Wisconsin. At the request of the petitioner, a hearing set for March 21, 2013 was rescheduled.

The issue for determination is whether Milwaukee Enrollment Services (MES) was correctly seeking recovery of FoodShare (FS) overpayments to the petitioner during the total period of January 1, 2012 through December 31, 2012 in the amount of \$5,904, due to petitioner's failure to timely report to MES her accurate household composition ([REDACTED] [REDACTED]) and Mr. [REDACTED]'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:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Katherine May, HSPC senior
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resided with her two children (third child was born March 21, 2012) creating a household of four.
2. The petitioner has three children in common with her boyfriend, [REDACTED].
3. The petitioner received FoodShare (FS) benefits for a household of three and then four during 2012.
4. The petitioner participated in her review for FoodShare and Medical Assistance as a single parent with her two and then three children during January, 2012, and did not report [REDACTED] as 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 application interview process, her six month review form (SMRF) and during her annual review, petitioner maintained that she lived alone with her minor children. Petitioner claimed that their father, [REDACTED], was in and out of jail, and when not in jail alleged with no reliable documentation that he resided with a friend.
7. The petitioner failed to establish with any reliable evidence the periods of time when [REDACTED] was in jail during 2012.
8. During the hearing, petitioner was not able to provide any reliable evidence that during the overpayment period [REDACTED] paid any monthly rent to any landlord or had a lease or any other contract as a rental agreement.
9. Due to a “tip” on December 5, 2012 that [REDACTED] did reside in petitioner’s household, MES began investigating whether the father of petitioner’s three 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.
10. MES established with reliable records (Municipal Court, Wisconsin Circuit court, child support agency) that [REDACTED] resided with the petitioner during the period of January 1, 2012 through December 31, 2012.
11. The petitioner received weekly Unemployment Compensation (UC) benefits (unearned income) of \$216 during the period of February 28, 2012 through August 6, 2012.
12. Petitioner had the following earned income from Wheaton Franciscan Healthcare (WFH) Pharmacy Enterprises during the overpayment period in question based upon State wage match:
a) 1st quarter of 2012 - \$469.38; and b) 3rd quarter of 2012 - \$768.66.
13. [REDACTED] has been employed full-time as a welder by Cooper Power Systems, LLC. His State wage records indicated that his wages during the year of 2012: a) 1st quarter - \$8,269.71 (monthly about \$2,756 with an additional \$132.55 per month in that quarter); b) 2nd quarter - \$11,770 – (monthly \$3,923.38; and c) 3rd quarter (\$15,484.16 (monthly about \$5,161.38); and d) 4th quarter - \$16,306.23 (above \$5,200).
14. [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.
15. On February 11, 2013, Milwaukee Enrollment Services sent a written Notification of FS Overissuance to petitioner informing that she was overissued \$5,904.00 in FS benefits from January 1, 2012 through December 31, 2012, due to petitioner’s failure to report accurate household members ([REDACTED] in her home) and Mr. [REDACTED]’s earned income.

16. The FS gross income eligibility limit for a household of four is \$3,842 and for five is \$4,502. FoodShare Wisconsin Handbook, 8.1.1, "Income limits."
17. The petitioner's FS household had total earned and unearned income for petitioner and [REDACTED] [REDACTED] which was above the FS income eligibility limits for the entire FS overpayment period of January 1, 2012 through December 31, 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 [REDACTED] [REDACTED] 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 [REDACTED] [REDACTED] 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. [REDACTED] were incorrectly awarded \$5,904 in FS benefits because the total accurate income of petitioner and Mr. [REDACTED] would have either placed the household over the gross income limit or reduced her FS benefits during petitioner's FS overpayment period.

During the April 10, 2013 hearing, [REDACTED] [REDACTED] failed to appear to testify or answer any questions. The petitioner testified in vague terms that Mr. [REDACTED] allegedly was in and out of jail during indefinite periods, and then lived with a friend [REDACTED] [REDACTED] during some uncertain periods during the overpayment period. Petitioner's testimony was not credible. The petitioner was unable to provide any reliable evidence to refute the county's case, or to indicate any error in the calculation of her FS overpayment. Petitioner 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 appeared entirely unconvincing as she was unable to provide any specific dates of her allegations, and had no receipts or documents whatsoever to confirm any rental payment to any party.

Overall, the petitioner presented a weak case and failed to undermine the county's FS overpayment case. During the April 10, 2013 hearing, petitioner was unable to present any non-hearsay 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 was unable to specify any error MES' calculation of the petitioner's FS overpayment amount of \$5,904.

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 and accurately 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. Accordingly for the above reasons, I must conclude that petitioner was overissued \$5,904 in FS benefits during the period of January 1, 2012 through December 31, 2012, due to petitioner's failure to timely report to MES her accurate household composition ([REDACTED] [REDACTED]) and Mr. [REDACTED]'s earned income which should have been included in her FS eligibility and benefit determinations.

CONCLUSIONS OF LAW

Milwaukee Enrollment Services (MES) was correctly seeking recovery of FoodShare (FS) overpayments to the petitioner during the total period of January 1, 2012 through December 31, 2012 in the amount of \$5,904, due to petitioner's failure to timely report to MES her accurate household composition ([REDACTED] [REDACTED]) and Mr. [REDACTED]'s earned income which should have been included in her FS eligibility and benefit determinations.

THEREFORE, it is

ORDERED

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 17th day of May, 2013

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on May 17, 2013.

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