



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/147905

PRELIMINARY RECITALS

Pursuant to a petition filed March 09, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the PACU - 5173 in regard to FoodShare benefits (FS), a hearing was held on April 11, 2013, via telephone.

The issue for determination is whether the Petitioner is liable for an overissuance of FS benefits to the Petitioner's stepson in the amount of \$1,791 for the period of August 1, 2012 – March 31, 2013.

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: Kristine DeBlare
PACU - 5173

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marinette County.
2. In July, 2012, the Petitioner's stepson CJ moved from Florida to Wisconsin to live near his mother and stepfather. On July 31, 2012, the Petitioner submitted an application to the agency for FS benefits. On the application, CJ reported RP (his mother) and Petitioner as members of his household. He reported that they buy food and eat meals together. CJ reported no income in the

household. He did not report that he is disabled and did not report any disability determination by the Social Security Administration. CJ reported his address as W830 County Hwy. N, Niagara, WI 54151. CJ did not accurately report RP's name and social security number.

3. On August 13, 2012, the agency conducted an interview with CJ. It was reported at that time that the Petitioner receives monthly SSI payments.
4. On August 27, 2012, the agency issued a Notice of Decision to CJ. The Notice indicated that CJ would receive \$225/month in benefits for himself, the Petitioner and RP effective August 1, 2012.
5. On November 25, 2012, CJ submitted an online renewal with the agency. He reported no household changes. He reported the Petitioner's SSI income of \$1113/month.
6. On December 3, 2012, the agency issued a Notice of Decision to CJ informing him that effective January 1, 2013, he would receive \$221/month in FS benefits for himself, the Petitioner and RP. The agency counted SSI income of \$1,128/month for the Petitioner.
7. On February 20, 2013, the agency received information from the State of Florida that CJ received FS benefits in Florida during the period of August 1, 2012 – October 31, 2012.
8. On March 5, 2013, CJ's case was updated to include RP's Social Security income.
9. On March 6, 2013, the agency issued a Notification of FS Overissuance and worksheets to CJ and to the Petitioner informing them of the agency's intent to recover \$1,791 in FS benefits overissued to him for the period of August 1, 2012 – March 31, 2013.
10. On March 8, 2013, CJ re-applied for FS benefits. He did not include RP and the Petitioner in his household. On March 22, 2013, the agency issued a Notice of Decision to CJ informing him that he is eligible for \$200/month in FS benefits for himself effective April 1, 2013.
11. CJ received FS benefits from the State of Florida for the period of August – October, 2012.
12. CJ suffered a traumatic brain injury in or about 1999. He has had a lifelong learning disability.
13. CJ resides in half of a duplex. RP and the Petitioner reside in the other half. CJ has his own living quarters, including kitchen. He prepares and eats most of his meals himself.
14. On March 9, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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.

The federal FS regulations define FS household composition as follows:

(a) General household definition. A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a).

FS rules provide further as follows:

The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

- (i) Spouses;
- (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and
- (iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent.

7 C.F.R. §273.1(b)(1); see also FS Handbook, Appendix 3.3.1.2.

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).

With regard to who is liable for the overpayment, the FS Handbook, App. 7.3.1.2 reads as follows:

All adult or emancipated minor food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

In this case, the agency acted based on the information that was available to it from CJ's application and interview. Based on the information, the agency included RP and the Petitioner in CJ's household and budgeted the income from RP and the Petitioner when that income became known. When the income of RP and the Petitioner was included, the household exceeded the income limits for FS benefits. Thus, the agency seeks to recover all benefits issued to the Petitioner for the period of August 1, 2012 – March 31, 2013 because the Petitioner was an adult member of the food unit at the time of the overpayment.

CJ and the Petitioner concede there was an overissuance for the period of August 1, 2012 – October 31, 2012 based on CJ receiving dual benefits. CJ and the Petitioner explained that CJ believed his benefits from Florida had ended when he moved in July, 2012. In fact, those benefits continued through the end of October, 2012.

With regard to household composition, the Petitioner testified that CJ lives in one half of their duplex and Petitioner and RP live in the other half. CJ testified that he believed the application asked for everyone who resided in the house and because he lives in the same building with his parents, he included them. He testified that it was his experience with applying for benefits in Florida that he should report his parents because they lived in the same building. CJ, the Petitioner and RP testified credibly that they maintain separate residences, that CJ has his own kitchen and that he generally eats separately from them (they have weekly Sunday dinners together). They testified that, because CJ has visual limitations and does not drive, his parents will drive him to the grocery store. He shops for his own food. CJ's parents

testified that they did not know that they were included in his household for FS purposes. They do not receive his mail and therefore never received the notices from the agency.

Based on the totality of the evidence, I conclude that RP and the Petitioner were not part of CJ's household for FS purposes. Therefore, the Petitioner and RP are not liable for any overissuance of benefits to CJ. Further, in determining whether CJ was overissued FS benefits, the income of the Petitioner and RP should not be included.

CONCLUSIONS OF LAW

The Petitioner is not liable for an overissuance of FS benefits to CJ for the period of August 1, 2012 – March 31, 2013.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to rescind its overpayment notice dated March 6, 2013 to the Petitioner and to cease all collection actions related to such overpayment determination. This action shall be taken 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 Milwaukee,
Wisconsin, this 2nd day of May, 2013

\sDebra Bursinger
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 2, 2013.

PACU - 5173
Public Assistance Collection Unit
Division of Health Care Access and Accountability