



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/149003

PRELIMINARY RECITALS

Pursuant to a petition filed April 29, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on June 05, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in determining an overissuance of FoodShare to petitioner in the amount of \$2,296 for the period from 3/1/12 to 10/31/12.

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
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was the named case head of a FS case in early 2012 for her 4-person household. The household included petitioner's daughter.
3. Petitioner was employed with [REDACTED] effective of 1/3/12.

4. Petitioner's income raised the household monthly gross income above 130% of the federal poverty level.
5. Petitioner did not inform the agency of the income. The income made the household ineligible for FS. On 3/18/13, the Department issued Notification of FS Overissuance.
6. Petitioner filed a timely appeal.

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).

An FS household is required to report an increase in income within 10 days if the increase causes income to go above 130% of poverty. Handbook, App. 8.1.1.1.

Petitioner does not dispute her income or that her income was above the limits of FS eligibility for the group. Petitioner's only argument is that her daughter was the person who signed up for FS because the daughter was pregnant and was a minor. Therefore, petitioner explains that she had to be the person listed as the head of the FS case. The record is clear that petitioner was aware of the FS case and agreed to be the case head to help her daughter. Petitioner does not dispute the agency's position that many notices were sent to her that informed her of her obligation to notify the agency of changes in household income. Petitioner explained that whenever mail would come to her regarding the FS case, she never looked at it and would just turn it over to her daughter.

Petitioner made the choice to become the responsible party of the case. She knowingly failed to read various official notices that were mailed to her. Petitioner could have avoided this problem by initially not agreeing to be involved. But, she did not. And, FS was allotted to her household, including petitioner. Petitioner benefitted. Petitioner could also have actually read the many mailings that were sent to her at her home addressed to her. Instead she claims to have ignored them.

Petitioner cannot now claim not to have responsibility for the overissued benefits. The benefits should not have gone to the family. The agency is required to get the funds back from the case head and, possibly, from any other adult in the household. *See FS Wisconsin Handbook Sec. 7.3.1.2.*

CONCLUSIONS OF LAW

The Department did not err in determining petitioner's liability for a \$2,296 FS overissuance from 3/1/12 to 10/31/12.

THEREFORE, it is

ORDERED

That this appeal is 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 24th day of June, 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 June 24, 2013.

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