



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/149956

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 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 telephonic hearing was held on July 10, 2013, at Fond Du Lac, Wisconsin.

The issue for determination is whether the county agency is correctly seeking recovery of FS overpayments to the petitioner during the period of July 1, 2010 through February 29, 2012, due to failure to timely report to the county agency his monthly permanent disability checks.

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: Deborah Bohlman, 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 his wife, [REDACTED], and their one minor child. Petitioner had an ongoing FoodShare case for his household of three.

2. On June 9, 2010, petitioner completed a telephone interview for his annual FS renewal. He reported his earned income at [REDACTED], his temporary disability workmen's compensation payments from [REDACTED], and [REDACTED]'s unemployment compensation. Petitioner signed that renewal application.
3. The petitioner received temporary workmen's compensation of \$234.04 for the months of July, 2010 through November, 2010.
4. Petitioner received FoodShare (FS) benefits for a household of three during the period of July 1, 2010 through February 29, 2012.
5. On December 28, 2010, petitioner in his six month report form (SMRF), petitioner reported petitioner's income at [REDACTED] and [REDACTED]'s employment at [REDACTED].
6. The petitioner completed his annual renewal application on June 7, 2011 reporting his employment/income at [REDACTED] and [REDACTED]'s employment at [REDACTED].
7. On December 1, 2011, petitioner in his six month report form (SMRF), petitioner reported his earned income at [REDACTED] and [REDACTED]'s employment at [REDACTED].
8. On March 22, 2012, the county agency discovered from [REDACTED] representative [REDACTED] that petitioner had been receiving monthly permanent disability benefits of \$1,135.33 from May, 2010 through February, 2012, but petitioner failed to timely notify the county agency of that disability unearned income.
9. The petitioner's net household income was above the FS net income limit of \$1,526 from July, 2010 to September, 2011, and was also above the increased net income limit of \$1,545 during the period of October, 2011 through January, 2012 for a household of three. During each of those months, petitioner's FS household was therefore income ineligible for FS benefits during that period.
10. The county agency sent a May 29, 2013 Notice of Food Stamp Overissuance to the petitioner stating that he had received \$4,782.00 in FS overissuances in Claim # [REDACTED] during the period of July 1, 2010 to February 29, 2012, due to failure to timely report to the county agency his monthly permanent disability checks of \$1,135.33.
11. The petitioner's remaining FS overpayment was \$4,782.22 as of the July 10, 2013 hearing date.

DISCUSSION

During the July 10, 2013 hearing, the county agency representative, ESS Deborah Bohlman, established with reliable evidence that the petitioner failed to timely report his monthly permanent disability benefits of \$1,135.33 from May, 2010 through February, 2012 to the county agency. As a result, petitioner's monthly permanent disability unearned income was not budgeted as income to the FS household in determining the petitioner's FS household eligibility. The county agency established that petitioner's net household income was above the net income limit for a household of three for each of the months of July, 2010 through January, 2012. Petitioner was therefore income ineligible for FS benefits during that period. The petitioner did not contest that he had received FS benefits during the period of July, 2010 through February, 2012. Furthermore, petitioner did not offer any reliable evidence to convincingly refute the accuracy of the county agency's FS overpayment determination of \$4,782.00 for that overpayment period.

During the hearing, petitioner was unable to provide any reliable testimony or evidence to refute that the county agency was correctly pursuing this FS overpayment against him and his wife due to joint and several liability. The petitioner contended that it was unfair that MES was seeking recovery of the overpayment. Petitioner also explained that he has many monthly expenses, and cannot afford to repay any FS benefits.

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, the county agency is correctly seeking recovery of FS overpayments to the petitioner during the period of July 1, 2010 through February, 2012, due to failure to timely report to the county agency his monthly permanent disability checks which began May, 2010.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of FS overpayments to the petitioner during the period of July 1, 2010 through February 29, 2012, due to failure to timely report to the county agency his monthly permanent disability checks which began May, 2010.

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 2nd day of August, 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 August 2, 2013.

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