



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/150136

PRELIMINARY RECITALS

Pursuant to a petition filed June 18, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Polk County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on July 25, 2013, at Balsam Lake, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner must repay an alleged overpayment of FoodShare.

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: Diana Peterson

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Polk County.
2. The county agency seeks to recover \$3,835 in FoodShare that the petitioner received from September 1, 2012, through April 30, 2013.

3. The agency presented no evidence indicating how much the petitioner's household actually received in FoodShare from September 1, 2012, through April 30, 2013.
4. There is insufficient evidence to determine the petitioner's gross household income throughout the period in question.
5. There is no evidence concerning any deduction the petitioner might be entitled to.

DISCUSSION

Federal regulations require state agencies to “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. The county agency has the burden of proving the overpayment by the preponderance of the credible evidence. The amount of the overpayment is obtained by subtracting the amount the petitioner's household should have received from the amount it actually received. The amount it should have received is determined by the size of the household and net income; net income is determined by subtracting those deductions—and only those deductions—found in 7 CFR § 273.9(d) from gross income.

The agency contends that the petitioner's household received \$3,835 more in FoodShare than it was entitled to from September 1, 2012, through April 30, 2013. In order to determine whether the agency correctly determined the overpayment, the administrative law judge must know the amount of FoodShare the petitioner actually received, the size of her household, her gross income, what deductions she was entitled to, and how her deductions were determined. The relevant evidence submitted by the agency consisted of a referral indicating the amount and the period of the overpayment, one employer verification for her and two for her husband indicating their earned income from July through December 2012, and a check stub indicating how much her husband earned in 2013 as of June 5, 2013. The companion medical assistance overpayment file contains a summary of the petitioner and her husband's earned and unearned income from January through April 2013, and indicates that there are five persons in the household.

There is no evidence of the amount of FoodShare the petitioner's household actually received during this period. Her husband receives disability payments, but there is no evidence of the amount of these payments he received in 2012, which means that it is impossible to determine the household's gross income for the period. Nor is there any evidence of the their housing costs, so it is impossible to determine how much, if anything, they are entitled to for a shelter deduction. Because the petitioner's husband is disabled, the household might also be entitled to an excess medical deduction, but there is no evidence of his medical costs. The evidence in this matter does not allow me to determine how much FoodShare the petitioner's household received and how much it was entitled to. This makes it impossible to determine if the agency correctly determined the amount of the overpayment—or even to determine if there is an overpayment of some alternative amount. As a result, the agency has not met its burden of proof, and I must reverse its finding.

This decision does not mean that the agency must prove that the recipient owes exactly what the agency contends she owes to establish an overpayment. Administrative law judges can review the evidence and law and come up with a larger or smaller overpayment if the evidence and law support a different conclusion. But the judge can only do this if there is enough evidence to support some particular alternative amount. In this matter, there is no evidence to support either the agency's finding or any other possible finding. This means that coming up with an overpayment amount would require the judge to speculate concerning the evidence, which the law does not allow.

In future overpayment actions, the agency should prepare the standard worksheet showing how much the recipient's household received each month and how much it should have received. This worksheet

includes all income and allowable deductions. The agency should also be prepared to prove that the amounts on that worksheet are correct.

CONCLUSIONS OF LAW

The agency has not shown by the preponderance of the credible evidence that the petitioner received an overpayment of FoodShare.

THEREFORE, it is

ORDERED

The petitioner's 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 30th day of July, 2013

\sMichael D. O'Brien
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 July 30, 2013.

Polk County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability