



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/150616

PRELIMINARY RECITALS

Pursuant to a petition filed July 12, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Dodge County Department of Human Services in regard to an alleged overissuance of FoodShare (FS) benefits, a hearing was held on August 12, 2013, at Juneau, Wisconsin. The record was held open to allow for submission of further information.

The issue for determination is whether the respondent correctly established an overpayment of FS benefits to petitioner in March and April of 2012.

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: Amarilys Rodriguez

Dodge County Department of Human Services
143 E. Center Street
Juneau, WI 53039-1371

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.
2. Petitioner filed a Request for Fair Hearing concerning his FS benefits in February of 2012. His FS benefits were continued for the months of March and April, 2012, pending his appeal.

3. Petitioner's daughter moved to [REDACTED] [REDACTED] on or about March 25, 2012 and enrolled in [REDACTED] High School for the fourth quarter.
4. Petitioner's February, 2012, appeal was dismissed on April 9, 2012.
5. On or about May 23, 2013, Respondent informed petitioner that it sought to recover the continued FS benefits for the months of March and April, 2012, and established overpayment Claim no. [REDACTED] in the amount of \$1,020.00.
6. Petitioner filed a request for hearing on July 12, 2013.

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(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). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a); FS Handbook, § 7.3.1.2.

A food unit for FS includes individuals who live together and share meals. Children under age 22 must be included in the household if they live with their parents. 7 C.F.R. §273.1(a) and (b), FS Handbook, § 3.3.1. A person can be in only one food unit in a given month. Handbook, § 3.4.1.

At hearing the respondent conceded that the department was aware that petitioner's daughter was residing in petitioner's home as of March 25, 2012, at the latest. The department became aware of this fact more than one year prior to establishment of the overpayment; respondent testified that its records indicate that it was aware of this as of April 5, 2012. Still, the respondent sought to pursue full recoupment of petitioner's March and April, 2012, continued FS benefits. As a result, the respondent's overpayment figures are flawed. I will remand this matter to the respondent to review and re-determine whether an overpayment exists, taking into consideration the fact that petitioner's daughter was living in his home as of March 25, 2012, and if so, to determine the true amount of FS benefits overissued to petitioner.

CONCLUSIONS OF LAW

Petitioner's daughter lived with petitioner as of March 25, 2012, and lived with petitioner in the month of April, 2012.

NOW, THEREFORE, it is ORDERED

That this matter is remanded to the respondent to review and re-determine whether an FS overpayment exists for March and April of 2012, taking into consideration the fact that petitioner's daughter was living in his home as of March 25, 2012. If the respondent determines that an overpayment still exists, it shall issue new notices, with appeal rights, and worksheets to petitioner. All actions required under this Order shall be completed within 10 days following issuance 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 Madison,
Wisconsin, this 12th day of September, 2013

\sPeter McCombs
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 September 12, 2013.

Dodge County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability