



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/151383

PRELIMINARY RECITALS

Pursuant to a petition filed August 15, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on November 26, 2013, by telephone. The hearing was a rehearing granted by the Division of Hearings and Appeals on October 17, 2013.

The issue for determination is whether petitioner is a liable person on an FS overpayment claim.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner resides in a home that he owns with P.C., with whom he has two children. P.C. received FS from 2009 through June, 2012 for herself and three children. She did not report petitioner being in the household.

3. After an investigation the agency determined that petitioner should have been included in the household. It obtained his income information and determined that P.C. was overpaid a total of \$17,406 in FS from August, 2009 through June, 2012.
4. By notices dated July 9, 2012, the agency informed P.C. that she was overpaid that amount in four separate claims, nos. [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The notices were sent to P.C. at the address she shares with petitioner. The notices stated that only P.C. was liable for the overpayment; there was no mention of petitioner being liable. P.C. did not appeal.
5. In 2013 petitioner discovered that the agency was attempting to collect the overpayment from him. He filed this 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.

The FS Handbook, Appendix 7.3.1.2 provides specifically relative to this case:

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.

Italics in original. Only adult food unit members are liable for the overpayment. An adult in the household but not in the food unit is not liable.

Although petitioner should have been included in the household had P.C. reported the household correctly, he cannot be held liable because he was not part of the food unit when the overpayment occurred. I am not sure how petitioner benefits from this ruling because he still lives with P.C. and she clearly is liable, but the policy cannot be clearer.

I note that the federal regulation is not as clear as the Handbook provision. The federal regulation simply states that an adult member of the household is liable. The use of the word "household" is broader than the Handbook's use of the phrase "food unit." Nevertheless, since the Handbook is the Department's interpretation of the federal law, I must conclude that petitioner is not liable for the overpayment owed by P.C.

CONCLUSIONS OF LAW

Petitioner is not liable for the overpayment claim against the mother of his children because petitioner was not an FS food unit member during the period the mother was overpaid.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to remove petitioner as a liable individual on claims nos. [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The agency shall do so within 10

days of this decision. The claims remain effective against P.C., who was the head of household of the food unit that was overpaid.

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 27th day of November, 2013

\sBrian C. Schneider
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 November 27, 2013.

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