



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/151671

PRELIMINARY RECITALS

Pursuant to a petition filed August 23, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 17, 2013, at Racine, Wisconsin.

NOTE: The record was held open until October 23, 2013, to give Petitioner an opportunity to submit documentation showing that he was staying in Prairie Du Chien in 2011. No documentation was received by the designated deadline. Petitioner should note the rehearing instructions below and note the deadlines, if he was later able to obtain such documentation.

The issue for determination is whether the Racine County Department of Human Services correctly determined that Petitioner is liable for an over-issuance of FoodShare benefits to Petitioner's wife between July and September 2011.

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: Dean Landvatter, Fraud Coordinator
Racine County Department of Human Services
1717 Taylor Ave.
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner was and is currently married to CM, although they are divorcing. (Testimony of Petitioner; Exhibit 11)
3. CM received FoodShare benefits between July 2011 and September 2011. (Testimony of Petitioner)
4. On July 22, 2013, the agency sent Petitioner a Notification of FoodShare Overissuance, claim number [REDACTED], indicating that he is liable for an overpayment of \$1085.00 for the period of 07/01/11 to 09/30/11. (Exhibit 9)
5. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 28, 2013. (Exhibit 1)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook (FSH)*, App. §7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

Further, “all adult or emancipated minor food unit members at the time of 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...The following are responsible for paying a claim...Each person who was an adult member of the household when the overpayment or trafficking occurred...” *FSH §7.3.1.2; see also 7 CFR §273.11(a)(4)(i)*

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency’s case and establish facts sufficient to overcome the county agency’s evidence of correct action.

The Federal FoodShare regulations define FoodShare household composition as follows:

General household definition. (a) A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a) See in accord, FSH, §§3.3.1.1; 3.3.1.2 and 3.3.1.3.

Spouses who live together must be included in the same food unit, even if they do not purchase and prepare meals together. *7 C.F.R. §273.1(b)(1); See also FSH §3.3.1.3.*

In the case at hand, it is the agency's assertion that an overpayment occurred, because CM did not report her income when she returned to work from a medical leave. It is the agency's assertion that Petitioner is also liable for the overpayment because Petitioner is CM's spouse and was living with CM.

In order to prove Petitioner and CM were living together, the agency relied upon an application summary submitted by CM on September 15, 2011 and verified by her signature on October 26, 2011, indicating that Petitioner was part of her household. (Exhibit 7) The agency also relied upon a Six Month Report Form submitted by CM on March 5, 2011, indicating that Petitioner was part of her household. (Exhibit 3) In addition, the agency submitted a case comment indicating that on August 23, 2012, Petitioner contacted the agency and indicated he was no longer living with Petitioner (Exhibit 10) and a case comment dated August 28, 2012, indicating Petitioner called in and indicated that CM had not lived at the home for four to five months (Exhibit 11).

Petitioner does not dispute the fact that an overpayment of FoodShare benefits occurred, nor does Petitioner dispute the agency's calculation of the overpayment. However, Petitioner essentially asserts that CM was not truthful in what she reported to the agency, because he was not living with her during the time in question. Petitioner testified that in January 2011, he moved in with the brother of SB, his girlfriend/fiancé, in Prairie du Chien. Petitioner testified that he was with the brother for about two to two and half weeks and then started staying at motels off and on with SB. Petitioner testified that he would return to Racine for 1 to 1 ½ weeks at a time for doctor's appointments. Petitioner testified that most of his belongings were kept at his mother's house. Petitioner testified that he took over the residence from CM in August 2012, because she was not able to keep up the home.

The fact that Petitioner called into the agency in August 2012 to report he was no longer part of CM's case undermines Petitioner's claim and is compelling evidence that prior to August 2012, he was living with CM, as she reported in her March 2011, six month report form and in her September 2011 renewal. Based upon what Petitioner reported to the agency, it is found that a preponderance of the credible evidence supports the contention that Petitioner and CM were living together during the time in question. I note that Petitioner was given an opportunity to submit documentation, such as motel receipts, to rebut the agency's evidence and prove he was in Prairie du Chien during the time in question, but he did not provide any additional evidence.

Because Petitioner was married to and living with CM between July 2011 and September 2011, he is liable for any overpayment CM incurred.

CONCLUSIONS OF LAW

The agency correctly determined that Petitioner is liable for an over-issuance of FoodShare benefits to Petitioner's wife between July 2011 and September 2011.

THEREFORE, it is

ORDERED

That the Petitioner be 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 Milwaukee,
Wisconsin, this 25th day of October, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 25, 2013.

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