



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/152279

PRELIMINARY RECITALS

Pursuant to a petition filed September 20, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Eau Claire County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 19, 2013, at Eau Claire, Wisconsin. A hearing scheduled for October 22, 2103, was rescheduled at the petitioner's request.

The issue for determination is whether the county agency may recover 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, Room 651
Madison, Wisconsin 53703

By: Mary Myers

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.

2. The county agency alleges that the petitioner received a \$1,051 overpayment of FoodShare from February 9, 2011, through July 31, 2011.
3. The Department has collected \$230 of the alleged overpayment.
4. The petitioner originally applied for FoodShare on February 9, 2011.
5. The petitioner was awarded a \$985 Veterans Administration disability pension on April 26, 2011. He did not begin receiving this pension until May 2011 or later.
6. The Division of Hearings and Appeals has never found that the petitioner received an overpayment of FoodShare.

DISCUSSION

The Department alleges that the petitioner received a \$1,051 overpayment of FoodShare from February 9, 2011, through July 31, 2011, and has already recovered \$230 from his ongoing benefits. It claims it had authority to recover from his benefits because it prevailed in a previous decision, *DHA Decision No. FOO-137096*, issued on November 29, 2011. But this decision concerned his future rather than his past eligibility, and provided no authority to recover any benefits. Thus, to recover any benefits from the petitioner, the Department must prove by the preponderance of the credible evidence at the current hearing that he received more FoodShare than he was entitled to.

Federal rules 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 basis of the alleged overpayment is that the petitioner failed to report a VA pension when he applied for benefits in February 2011. However, the county worker contacted the VA and documented that the earliest the petitioner could have begun receiving a pension was in May 2011. (Despite representing the agency in this matter, she supports the petitioner’s position.) In addition, she points out that his income never exceeded 130% of the federal poverty level. FoodShare policy found at the *FoodShare Wisconsin Handbook*, §6.1.1.2. states:

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

This means that the petitioner was not required to report any change of income until his benefits were recertified, which would have occurred past the time of the alleged overpayment. As the petitioner and his worker agree, there never was an overpayment. The Department had no authority to recover from his past benefits and it has no authority to recover from his future benefits.

The workload of county workers has increased considerably in the last few years. Despite this, Mary Myers, the worker at the hearing, spent a good deal of time calling and gathering documentation from various agencies, including the VA, in order to ensure that the petitioner, a disabled veteran, was not saddled with an incorrect overpayment. She is commended.

CONCLUSIONS OF LAW

The petitioner did not receive an overpayment of FoodShare.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take all steps necessary to remove any finding from the petitioner's record that he received an overpayment of FoodShare from February 9, 2011, through July 31, 2011, and that it issue a \$230 supplemental payment to him.

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, Room 651, 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 3rd day of December, 2013

\sMichael D. O'Brien
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 December 3, 2013.

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