



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/152477

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 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 24, 2013, at Racine, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits because the father of her child(ren) was living in the home, that was not reported and his income was not being counted for FoodShare eligibility and allotment purposes.

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

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner was sent a notice of FoodShare overpayment notice dated September 20, 2013 that informed her that she had been overpaid FoodShare benefits in the amount of \$1701.00 during the period from February 1, 2013 through August 31, 2013. Petitioner timely appealed.

3. The reason for the alleged overissuance was that Petitioner failed to report the father (LB) of her child(ren) was living in the home. His income was not counted for FoodShare eligibility and allotment purposes.
4. The agency based its decision that LB was in the home of the following:
 - utilities at Petitioner’s address are in the name of LB;
 - the landlord was interviewed and indicated that the lease was in both names and though it became a month-to-month tenancy by August 2012, LB still lived there;
 - a Racine Circuit Court paternity matter in March 2013 listed the same address for Petitioner and LB and
 - an agency investigator interviewed Petitioner and his testimony as well as his written report indicated that Petitioner told him that LB was at her residence most of the time, in fact, 80-90 % of the time.
5. LB’s income was not an issue at the hearing.

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 Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook, Appendix §7.3.2*. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, *7 CFR § 273.18(b)*; see also *FoodShare Wisconsin Handbook, App. 7.3.1.9*. Overpayments due to “client error” may be recovered for up to six years after discovery. *FoodShare Wisconsin Handbook, §7.3.2.1*.

Additionally, Federal Regulations provide, in relevant part, as follows:

- (a) Establishing claims against households.** All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .
- 7 CFR § 273.18; also see FoodShare Wisconsin Handbook (FSH), § 7.3.1.1.*

Finally, also relevant here is the following as to who must be included in a FoodShare household:

3.3.1.3 Relationship Rules

7 CFR 273.1(b)(1)

The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses and spouses,
2. Biological (unless no longer a parent because of adoption), adoptive, or step-parents and their children under the age of 22, and
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

...
FSH, §3.3.1.3.

In an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. A Petitioner must then rebut

the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

The documentary record provided by the agency is really laid out in the Findings at # 4 and does establish a prima facie case for the proposition that Petitioner and LB were residing together. The question becomes whether the testimony of Petitioner overcomes that prima facie case.

Petitioner disputed the testimony of the investigator, testifying herself that she did not make the statements attributed to her. There is no documentary evidence to show LB living at another address other than that of Petitioner. Her mother accompanied Petitioner to the hearing but could not provide details as to whether LB was living in the home or not.

I find the testimony of investigator and landlord to be the more persuasive testimony. The address for LB with the utility and in the Court records reinforces their testimony.

CONCLUSIONS OF LAW

That the evidence offered by the agency is sufficient to demonstrate that Petitioner was overpaid FoodShare benefits as alleged as the father of her child(ren) was living with Petitioner during the period of the overpayment.

THEREFORE, it is

ORDERED

That this 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 Milwaukee,
Wisconsin, this 25th day of November, 2013

\sDavid D. Fleming
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 25, 2013.

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