FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/152881

PRELIMINARY RECITALS

Pursuant to a petition filed October 18, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Calumet County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 25, 2013, at Chilton, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Kristy Ruebl
Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Calumet County.
2. Petitioner was an adult member of a six-person FS household during the period of the claimed overissuance.
3. During the period of the claimed overissuance, the income received by the adult members of the household placed the household above the $2,250.83 reporting requirement for a 6-person household, and above the budgeted income amount for each month or the period. The household did not report the increased income.

4. [redacted]'s income for the first quarter of 2013 was $5,744. This amount exceeded the agency budgeted amount.

5. [redacted]'s income for the first quarter of 2013 was $4,203. This amount exceeded the agency budgeted amount.

6. The total income for the month of January 2013 for the household was $2,482.51.

7. On September 19, 2013, the Department sent a Notification of FS Overissuance to each of the adults in the household ([redacted], [redacted] and [redacted]) for the amount of $1,333 and for the period from January 2013 to June 2013.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS 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, 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 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

The agency argues that petitioner's household exceeded the reporting requirement triggered when the household income exceeded $2,250.83, and that the household was actually eligible for a lesser amount of FS during the overissuance period of January 2013 to June 2013. The overpaid amounts are reflected in the FS Overpayment Worksheet

Petitioner did not dispute the corrected income numbers budgeted by the agency or the calculation of the overissuance. Petitioner's main argument was that [redacted] was not working during the overpayment period. But, the agency did not count any income for [redacted] during the overpayment period. So, this does not affect the determination in any way.

Petitioner also claimed that [redacted] was not actually living in the home from February 2013 to May 2013. But this change was never reported to the agency. Petitioner only raised this claim at the time of hearing. Petitioner provided a letter (not signed under oath) from a person who is purported to be [redacted]'s boyfriend which asserts that [redacted] lived with him during a period of time (see ex. #3). This person did not appear at the hearing to be questioned. It is petitioner's obligation to report such changes to the agency when they occur (within ten day per program rules). I will not attempt to determine this fact nearly a year later. Petitioner was collecting FoodShare directed to her household allotment in [redacted]'s name. Petitioner must be held to the information she reported.

Petitioner was also concerned that she and the other two petitioner/family members were individually liable for the entire amount. That is, that the total amount overpaid would be collected three times. Program regulations also 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. The FS Handbook similarly provides that an adult a person who is 18 years old or older and a member of the food unit at the time the overpayment occurred is liable for repayment of any overissued FS benefits. FS Handbook §7.3.1.2. At the time of the hearing, it became clear that petitioner was concerned that the full amount of the overpayment was due from each of the petitioner/family members. Joint and several liability, however, is fully satisfied when the sum is recovered from *any* of the liable parties. The amount can only be collected once.

CONCLUSIONS OF LAW

The Department did not err in determining the overissuance of FS to the household and in determining petitioner's liability as she was an adult in the household during the overissuance period.

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, 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 6th day of December, 2013

\sJohn P. Tedesco
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 December 6, 2013.

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