FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/153139

PRELIMINARY RECITALS

Pursuant to a petition filed October 24, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on December 09, 2013, at Green Bay, Wisconsin. At the request of the parties, the record was held open for the petitioner to submit a closing argument to the county agency and the Division of Hearings and Appeals (DHA), and then for the county agency to submit its response to DHA (and to petitioner). The parties timely submitted their closing arguments to DHA. [redacted]'s case was consolidated with [redacted]'s hearing and decision in DHA Case No. FOP-153138.

The issue for determination is whether the county agency is correctly seeking recovery of FoodShare (FS) overpayments to the petitioner during the total period of July 1, 2012 through May 31, 2013, due to petitioner's failure to timely report to the county her accurate household composition ([redacted]) and Mr. [redacted]'s earned income which should have been included in her FS eligibility determinations resulting in household income above the FS income eligibility limits.

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: Theresa Sommerfeldt, ESS
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. [redacted] [redacted] (CARES # [redacted]) is a resident of Brown County who resided with her girlfriend, [redacted] [redacted] [redacted] and her two children. [redacted] and [redacted] had child in common on February 19, 2013) creating a household of five.

2. The petitioner, [redacted] [redacted], received FoodShare (FS) benefits for a household of three and then four during the period so July 1, 2012 through May 31, 2013.

3. The petitioner participated in her review for FoodShare and Medical Assistance as a single parent with her two and then three children, but did not report [redacted] [redacted] as residing in her household, and thus a FS group of four and then five (of February 19, 2013 date of their new baby).

4. The petitioner received FoodShare (FS) benefits for the entire period of July 1, 2012 through May 31, 2013.

5. During her application interview process, her six month review form (SMRF) and during her annual review, petitioner maintained that she lived alone with her minor children. Petitioner alleged that her boyfriend, [redacted] [redacted], lived with his mother or stayed with his friends, but was unable to provide any reliable documentation that he resided with his mother or friends.

6. During the hearing, neither petitioner nor [redacted] [redacted] were able to provide any reliable evidence (a lease or any contract) between petitioner and his mother to establish that he was living with his mother during the FS overpayment period. Mr. [redacted] admitted that he did not pay any rent to his mother

7. Due to a "tip" that [redacted] [redacted] did reside in petitioner's household, the county agency began investigating whether the [redacted] [redacted] had been residing with petitioner at least as of July 1, 2012 and that his income had not been timely reported to the county agency.

8. The county agency established with reliable records ([redacted] [redacted] added to the petitioner's leases since 2010 as a permanent resident of petitioner's household, his paychecks from Diesel Specialists went to petitioner's address, and Department of Transportation (DOT)) that [redacted] [redacted] resided with the petitioner during the period of July 1, 2012 through May 31, 2013.

9. The petitioner received monthly child support payments (unearned income) of $1,259 (except $1,234 for October, 2012).

10. [redacted] [redacted] had the following earned income as a diesel mechanic at Diesel Specialists during the overpayment period in question: a) July, 2012 - $2,632.68; b) August, 2012 - $3,955.08; c) September, 2012 - $2,636.80; d) October, 2012 - $2,636.80; e) November, 2012 - $2,642.95; f) December, 2012 - $2,599.72; g) January, 2013 - $3,895.46; h) February, 2013 - $2,636.80; i) March, 2013 - $2,628.56; j) April, 2013 - $2,649.16; and k) May, 2013 - $2,655.34.

11. [redacted] [redacted]'s earned income was not included in determining petitioner's FS eligibility and benefits for the entire FS overpayment period of July 1, 2012 through May 31, 2013 creating petitioner's FS overpayment.

12. On August 26, 2013, the county agency sent a written Notification of FS Overissuance to petitioner informing that she was overissued $2,917.00 in FS benefits from July 1, 2012 through January 31, 2013, due to petitioner's failure to report accurate household members ([redacted] [redacted] in her home) and Mr. [redacted]'s earned income resulting in household income above the FS gross income eligibility limits.

13. On August 26, 2013, the county agency sent a written Notification of FS Overissuance to petitioner informing that she was overissued $1,710.00 in FS benefits from February 6, 2013 through May 31, 2013, due to petitioner's failure to report accurate household members ([redacted]

[redacted] in her home) and Mr. [redacted]'s earned income resulting in household income above the FS net income eligibility limits.

14. The FS gross income eligibility limit for a household of four was $3,842 for four and then $4,520 for five. The FS net income eligibility limit for a household of five was $2,251 per FoodShare Wisconsin Handbook, 8.1.1, "Income limits."

15. The petitioner's FS household had total earned and unearned income for petitioner and [redacted] which was above the FS income eligibility limits for the entire FS overpayment period of July 1, 2012 through May 31, 2013.

DISCUSSION

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). 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(a)(2)(emphasis added).

Those 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 is 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. All nonexempt income must be budgeted in determining FS. 7 C.F.R. § 273.9(b). As a result, **petitioner and [redacted] [redacted] were jointly and severally liable for this FS overpayment**.

In this case, the county agency proved by the preponderance of the evidence that the basis for the overpayment was client error. The county agency correctly determined that [redacted] [redacted] was part of the petitioner's food unit since prior to July, 2012, and that his income had not been used to determine her FS eligibility and benefits which, in turn, gave rise to the FS overpayments during the period of July, 2012 through May, 2013. The county representative indicated that petitioner and Mr. [redacted] were incorrectly awarded $4,627 ($2,917 + $1,710) in FS benefits because the total accurate income of petitioner and Mr. [redacted] would have either placed the household over the gross income limit or net income limit during petitioner's FS overpayment period.

During the December 9, 2013 hearing, [redacted] [redacted] did appear but his testimony was unconvincing that he had not resided with the petitioner during the full FS overpayment period. The petitioner testified in vague terms that Mr. [redacted] resided with his mother or friends during some uncertain periods during the overpayment period. Petitioner's testimony was not credible. The petitioner was unable to provide any reliable evidence to refute the county's case, or to indicate any error in the calculation of her FS overpayment. Neither petitioner nor Mr. [redacted] were unable to provide any evidence of any lease or contract of any kind for Mr. [redacted] to have resided at any other residence than the petitioner's during the overpayment period. Furthermore, the letter from petitioner's landlord, [redacted], clearly stated that Mr. [redacted] was a permanent full-time resident at petitioner's duplex, and thus [redacted] [redacted] was required to sign the petitioner's leases since 2010.

Overall, the petitioner presented a weak case and failed to undermine the county's FS overpayment case. During the December 9, 2013 hearing and in her closing argument, petitioner alleged that because [redacted] received some mail at his mother's address such mailing in themselves established that [redacted] was living with his mother. Such hearsay evidence was not convincing and [redacted]'s mother did not testify or offer any affidavit. The petitioner was unable to present any non-hearsay reliable evidence to refute or undermine the county's testimony or evidence that [redacted] [redacted] resided with the petitioner and his income and later their child in common during the entire FS overpayment period. Therefore, Mr. [redacted]'s earned income must be budgeted as income in determining petitioner's FS eligibility. The petitioner was unable to specify any error in the county agency's calculation of the petitioner's FS overpayment amount of $4,627.00

The petitioner did not contest that her FS household had received FS benefits during the period of July, 2012 through May, 2013. Furthermore, the petitioner was unable to offer any reliable evidence to refute that the county agency was correctly and accurately pursing FS overpayments of the petitioner. Nevertheless, petitioner contended that it was unfair that the county agency was seeking to recover the FS overpayment. However, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: "The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . . " 7 C.F.R. § 273.18(a); see also FoodShare Wisconsin Handbook, Appendices 7.3.1.9 and 7.3.1.1. Accordingly for the above reasons, I must conclude that petitioner was overissued a total of $4,627 in FS benefits during the total period of July, 2012 through May, 2013, due to petitioner's failure to timely report to the county agency her accurate household composition and Mr. [redacted]'s earned income which should have been included in her FS eligibility and benefit determinations.

CONCLUSIONS OF LAW

1. The county agency is correctly seeking recovery of FoodShare (FS) overpayments to the petitioner during the total period of July 1, 2012 through May 31, 2013, due to petitioner's failure to timely report to the county her accurate household composition ([redacted] [redacted]) and Mr. [redacted]'s earned income which should have been included in her FS eligibility determinations resulting in petitioner's household income above the FS income eligibility limits.

2. [redacted] [redacted] is jointly and severally liable for the petitioner's FS overpayment as stated in Conclusion of Law #1 above, pursuant to 7 CFR § 273.18.

THEREFORE, it is **ORDERED**

The petition for review herein be and the same is hereby 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 26th day of December, 2013

_____

\sGary M. Wolkstein
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 26, 2013.

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