



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/153169

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on December 04, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$934 for the period of March 6, 2013 – August 31, 2013 and \$329 for the period of September 1, 2013 – October 31, 2013.

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: Megan Ryan
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On or about November 19, 2012, Petitioner's step-daughter [REDACTED] moved to the Petitioner's house in Wisconsin from [REDACTED]'s mother's house in [REDACTED].

3. On November 1, 2012, ■■■'s mother applied for food assistance in ■■■■■. She reported ■■■ in her household and food group. On November 19, 2012, ■■■'s mother had an interview with the ■■■■■ agency that administers food assistance. On November 20, 2012, the ■■■■■ agency processed ■■■'s mother's application and approved food assistance. ■■■ was included in the household and ■■■'s mother received food assistance from the State of ■■■■■ for ■■■ for the period of November 1, 2012 – October 31, 2013.
4. On December 7, 2012, the Petitioner reported to the agency that ■■■ was living in her household. Petitioner was receiving child care benefits at that time but was not receiving FS benefits.
5. On March 6, 2013, the Petitioner submitted an application for FS benefits. She reported ■■■ as a member of the household. Petitioner was unaware when ■■■ moved to her household that ■■■ was on her mother's FS case in ■■■■■ and that ■■■'s mother was receiving FS benefits for ■■■ from the state of ■■■■■.
6. Petitioner received FS benefits for ■■■ for the period of March 6, 2013 – October 31, 2013.
7. On September 24, 2013, the agency became aware through a data match that ■■■ was on her mother's food assistance case in ■■■■■.
8. On September 25, 2013, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of ■■■'s school enrollment status, a copy of ■■■'s social security card and a closure letter from ■■■■■ indicating when ■■■'s FS benefits ended in ■■■■■. The due date for the requested verifications was October 4, 2013.
9. The Petitioner provided documentation from ■■■'s school in Wisconsin on October 22, 2013. The documentation indicates it is from ■■■■■ Schools and demonstrates that ■■■ was "admitted" to ■■■■■ School on November 20, 2012.
10. On October 28, 2013, the agency issued Notifications of FS Overissuance to the Petitioner and ■■■'s father MG informing them that the agency seeks to recover an overissuance of FS benefits in the amount of \$934 for the period of March 6, 2013 – August 31, 2013 and \$329 for the period of September 1, 2013 – October 31, 2013.
11. On October 30, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.
12. On November 1, 2013, ■■■ was removed from her mother's case in ■■■■■.

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, § 7.3.2. Generally speaking, whose "fault" caused the overissuance 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.* Here, the alleged overpayment sought by the agency occurred 6 months prior to the discovery date. The overpayment is alleged to be a result of client error so the agency is within the time period to seek recovery.

In a fair hearing concerning the correctness of an overpayment of benefits, including the Food Share program, the burden of proof is on the agency. The agency must demonstrate a prima facie case establishing by the preponderance of the evidence that the overpayment occurred as determined, and must be recovered.

In this case, the Petitioner does not dispute the evidence that [REDACTED] was included in her mother's FS group in [REDACTED] during the period of November 1, 2012 – October 31, 2013. The Petitioner testified credibly that she was unaware that [REDACTED] was part of her mother's case and was unaware that [REDACTED]'s mother continued to collect FS benefits for [REDACTED] even after [REDACTED] moved from [REDACTED] to Wisconsin in November, 2012. The Petitioner asserts that she should not be responsible for an overissuance when it is undisputed [REDACTED] was actually residing with her in Wisconsin as a part of her household and [REDACTED]'s mother was receiving benefits for [REDACTED] even though [REDACTED] was not residing in [REDACTED].

The agency does not disagree with the Petitioner's assertion but notes that [REDACTED]'s mother opened her case in [REDACTED] effective November 1, 2012 when [REDACTED] was still in [REDACTED]. The agency testified that the State of [REDACTED] does not require reporting changes in household composition until the annual review for the case. Therefore, [REDACTED]'s mother was not required to report that [REDACTED] moved to Wisconsin until the annual review in October, 2013. The agency testified that if the Petitioner had been aware that [REDACTED]'s mother continued to receive benefits and had reported this when Petitioner added [REDACTED] to the case, the agency would have acted to have [REDACTED] removed from her mother's [REDACTED] case. However, Petitioner was not aware and therefore did not report. Because the Petitioner applied for and received FS benefits for [REDACTED] when she was already part of another case, the agency asserts it is required to recover the duplicate payments from the Petitioner.

Part of the issue in this case was a question as to when [REDACTED] moved to Wisconsin. The Petitioner presented documentation from [REDACTED] Schools that indicates the Petitioner was "admitted" effective November 20, 2012. The state agencies in [REDACTED] and Wisconsin did not accept this as sufficient evidence of [REDACTED]'s attendance in Wisconsin because the form was difficult to read and it was not the "typical" form [REDACTED] uses to report enrollment. In addition, the evidence indicates there was a question about whether November 20, 2012 was the actual date that [REDACTED] started to attend school. I reviewed the form and find that it sufficiently documents that [REDACTED] was "admitted" in an [REDACTED] school as of November 20, 2012. The Petitioner testified that [REDACTED] had started classes and was living in Wisconsin at the time. I find the evidence sufficient to conclude that [REDACTED] had started classes in Wisconsin on November 20, 2012.

I note that the agency's evidence includes emails between the agencies in Wisconsin and [REDACTED]. An email from [REDACTED] in [REDACTED] dated November 7, 2013 states as follows:

"Our client [REDACTED]'s mother] applied for benefits Nov 1st and was interviewed Nov 19th. Her case was processed Nov 20th. I can see on the enrollment paperwork where [REDACTED] was enrolled in school Nov 20th but not when she actually started attending classes. If it was on Nov 20th, then we will write a fraud claim for the entire cert period. If it was after Nov 20th, which would be a change that our client did not have to report, so we would let you guys write a claim for 3/2013 – 10/2013."

Based on the evidence, [REDACTED] had to be in Wisconsin on or before November 19 in order to start classes here on November 20. Therefore, when [REDACTED]'s mother was interviewed in [REDACTED] on November 19, she was required to report that [REDACTED] was not in the household.

Further, in reviewing [REDACTED]'s reporting requirements, it appears that [REDACTED]'s mother was required to file a six month report form. Chapter 17 of the [REDACTED] Department of Human Resources regulation governing SNAP benefits indicates that households in which all adult members are elderly or disabled have a 12 month certification and reporting period. All other certified households have a 12 month certification period with a requirement to file a six month report form, reporting any changes including household composition. There was insufficient evidence at the hearing to allow me to conclude what reporting period [REDACTED]'s mother was subject to in the regulations. If [REDACTED]'s mother was required to file a six month report form, it would have been due in April, 2013. If she was required to report the household

composition change and failed to do so, it will change the analysis with regard to the Petitioner's overpayment obligation.

Based on the finding that [REDACTED] was in Wisconsin on or before November 19, 2012, I conclude that the Wisconsin agency may not establish a claim against the Petitioner for receiving benefits from March 6, 2013 – October 31, 2013. [REDACTED]'s mother misrepresented [REDACTED]'s residence and was not entitled to receive benefits for [REDACTED] for the period of November 1, 2012 – October 31, 2013. The [REDACTED] agency is not bound by this decision; however, as dicta, I note that the Wisconsin agency may share this decision with [REDACTED] to review whether an overpayment and/or IPV can be established against [REDACTED]'s mother based on [REDACTED]'s residence in Wisconsin at the time of the application and interview in [REDACTED].

CONCLUSIONS OF LAW

The agency may not establish a claim against the Petitioner for an overissuance of benefits for the period of March 6, 2013 – October 31, 2013 based on duplicate benefits being issued for [REDACTED].

THEREFORE, it is

ORDERED

This matter is remanded to the agency to rescind Claim Nos. [REDACTED] and [REDACTED] against the Petitioner. This action shall be taken within 10 days of the date of this decision.

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 Milwaukee,
Wisconsin, this 23rd day of December, 2013

\sDebra Bursinger
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 23, 2013.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability