



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/153687

PRELIMINARY RECITALS

Pursuant to a petition filed November 22, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Wood County Human Services - WI Rapids in regard to FoodShare benefits (FS), a telephone hearing was held on January 08, 2014.

The issue for determination is whether petitioner is a liable person on an FS overpayment claim.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Beulah Garcia

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Peter McCombs

Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Wood County.
2. In 2012 and 2013, petitioner resided at times with his girlfriend, L.K. Petitioner ceased residing with L.K. in October, 2013, and does not presently reside with L.K.
3. L.K. received FS from at least May, 2012 through June, 2013, for herself and her two children. She did not report petitioner being in the household prior to February of 2013.

4. After an investigation the agency determined that petitioner should have been included in the household. It obtained his income information and determined that L.K. was overpaid a total of \$1,058.00 in FS from May, 2012 through June, 2013.
5. By notice dated October 19, 2013, the agency informed L.K. that she was overpaid FS in two separate claims, nos. [REDACTED], and [REDACTED]. The notices included petitioner and L.K. in the “case name” field, though the notice’s indicated CARES number only relates to L.K. L.K. did not appeal.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). 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(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, § 7.3.1.2.

The FS Handbook, § 7.3.1.2 provides specifically relative to this case:

All adult or emancipated minor food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

Italics in original. Only adult food unit members are liable for the overpayment. An adult in the household but not in the food unit is not liable pursuant to this language.

Petitioner testified that he resided with L.K. off and on during the overpayment period, though there is no dispute that L.K. never reported her living arrangements, transient as they may have been, to the respondent. The respondent’s investigation, undertaken by O’Brien and Associates, contains several hearsay statements of L.K.’s neighbors, and L.K. herself. Unfortunately, neither the neighbors nor L.K. were present at hearing.¹ Although petitioner arguably should have been included in the household at least part of the time, had L.K. reported the household correctly, he cannot be held liable because he was not part of the food unit when the overpayment occurred.

I note that the federal regulation is not as clear as the Handbook provision. The federal regulation simply states that an adult member of the household is liable. The use of the word “household” is broader than the Handbook’s use of the phrase “food unit.” Nevertheless, since the Handbook is the Department’s interpretation of the federal law, I must conclude that petitioner is not liable for the overpayment owed by L.K.

¹ Administrative decisions cannot be based solely upon uncorroborated hearsay. *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987). Our state supreme court reinforced this principle in *Gehin v. Wisconsin Group Insurance Board*. 2005 WI 16, a decision that overturned a finding based upon untestified to medical records that were contradicted by petitioner’s sworn testimony. The court’s rationale is that “the purpose of allowing the admission of hearsay evidence is to free administrative agencies from technical evidentiary rules, but at the same time this flexibility does not go so far as to justify administrative findings that are not based on evidence having rational probative force.” *Id.* at ¶54.

CONCLUSIONS OF LAW

Petitioner is not liable for the overpayment claim against L.K. because petitioner was not an FS food unit member during the period that L.K. was overpaid.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to remove petitioner as a liable individual on claims nos. [REDACTED], and [REDACTED]. The agency shall do so within 10 days of this decision. This Decision does not affect or otherwise address L.K.'s liability for these overpayment claims.

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 16th day of January, 2014.

\sPeter McCombs
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 January 16, 2014.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability