



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/154615

PRELIMINARY RECITALS

Pursuant to a petition filed January 08, 2014, 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 February 19, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner was overissued \$897.00 of FS, due to the issuance of duplicate benefits in Florida pertaining to petitioner's minor children.

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner moved to Wisconsin in approximately July of 2013, and she applied for Wisconsin FS on July 18, 2013. She formerly resided in North Carolina.

3. Petitioner's children stayed with their grandmother in the state of Florida for a period of at least two months prior to petitioner's relocation to Wisconsin.
4. Petitioner's mother applied for and received Florida FS for petitioner's sons from June 3, 2013, through October 31, 2013.
5. The petitioner's household, which included her minor sons, was found eligible for FS in Wisconsin effective July 18, 2013
6. The respondent subsequently learned that petitioner's sons were included in petitioner's household at the same time that her sons were included in the sons' grandmother's Florida FS household.
7. The county agency informed petitioner that she had been overissued \$897.00 of FS due to her reporting of her sons in her Wisconsin FS household, while they were simultaneously included in their grandmother's Florida FS household.
8. The petitioner filed an appeal with the Division of Hearings & Appeals on January 8, 2014, contesting her liability for the overpayment.

DISCUSSION

If a FS overpayment occurred during the time in question, the agency must make an effort to recover it, regardless of who was at fault in creating the overpayment. An FS overpayment is defined as:

(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 or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive...

See, 7 C.F.R. §273.18(a). Thus, even if an FS agency in either Wisconsin or Florida was the cause of the overpayment, the petitioner must still repay it. The agency believes that an overpayment occurred here because the petitioner's minor sons received FS as part of a Florida FS household even after they relocated to Wisconsin. The applicable regulation can be found at 7 CFR §273.3(a) and the *FoodShare Wisconsin Handbook* § 3.4.1, which states:

A person cannot be a member of more than 1 food unit and 1 FS group in the same month except residents of shelters for battered women and children.

Persons moving to Wisconsin from another state are not eligible to receive duplicate FS benefits. States typically issue benefits on either a calendar or fiscal month. A fiscal month cycle provides benefits from a date in one month to a corresponding date in the next month. California (Fresno), Massachusetts, Nevada and South Dakota issue on a fiscal month cycle. Illinois issues benefits by calendar month (first day through the last day of the month) and by fiscal month (16th through 15th). Wisconsin issues on a calendar month cycle.

**** (Text – box example omitted here.)

Workers should contact the other state to verify the FS end date.

In any Fair Hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case. This applies

when the action is based on proving that a person was overpaid FS. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the county agency's evidence of correct action by the county agency in determining the negative action was required.

The petitioner does not contest the calculation of the overpayment, but instead attacks the respondent's determination that she is liable for the overpayment. In short, she argues that (1) she never authorized her son's grandmother to collect FS for her sons, (2) she never knew that her sons were recipients of FS in Florida, and (3) her son's grandmother should have been responsible for reporting that petitioner's sons were no longer residing with her. I found petitioner's testimony to be coherent, logical and credible.

The respondent asserted its bases for the overpayment in simple terms. The petitioner's sons received duplicate benefits, and therefore an overpayment was created. The Wisconsin FS benefits were the later to be issued, and therefore the overpayment occurred here, rather than in Florida. Petitioner noted that Florida and Wisconsin are both 'reduced reporting' states, which means that changes to household only need to be reported at the time of renewal. The documentation obtained from Florida is quite clear in identifying that petitioner's sons were included in their grandmother's FS household. See, Exhibit 2.

While I certainly understand petitioner's argument that she should not be held liable, the focus of her argument is misplaced. Petitioner's testimony indicates that her sons' grandmother may have perpetrated a fraud in knowingly receiving FS benefits for petitioner's sons even after they no longer resided with her. While petitioner may be justified in her anger toward her sons' grandmother, that does not equate to error on the part of the respondent in establishing this overpayment. As noted previously, FS overpayments must be recovered regardless of who is at fault. The petitioner has not identified any error by the respondent, nor has she identified any statute or regulation that would relieve her of liability here.

The petitioner has in effect argued that the FS program standard is unfair and that the administrative law judge should grant her relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, she is liable for the overpayment. No exception applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

The agency has established a prima facie case showing that the petitioner was overpaid by Wisconsin while her sons were receiving FS from Florida. The petitioner has failed to credibly rebut this showing. The FS overpayment determination must be sustained under these facts.

CONCLUSIONS OF LAW

1. The petitioner's minor sons were ineligible for Wisconsin FS during the months that they were receiving FS from Florida.
2. The petitioner received an overpayment of FS in Wisconsin in the amount of \$897.00.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby 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 18th day of March, 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 March 18, 2014.

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