



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/155197

PRELIMINARY RECITALS

Pursuant to a petition filed January 30, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Vilas County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 06, 2014, at Eagle River, Wisconsin.

The issue for determination is whether the respondent has correctly established an overpayment of FS benefits to petitioner.

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: Beulah Garcia

Vilas County Department of Social Services
330 Court Street
Eagle River, WI 54521

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Vilas County.
2. Petitioner has received FS benefits since approximately January of 2011.

3. On January 20, 2014, the respondent notified petitioner of an overpayment of FS benefits from January 15, 2013, though December 31, 2013, in the amount of \$4,174.00. Exhibit 7.
4. Petitioner has a reverse mortgage.

DISCUSSION

In a Fair Hearing concerning the propriety of an overpayment of benefits, such as this, the county agency has the burden of proof to establish that the action taken by the county was proper. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

Federal law generally requires *all* FS overpayments be recovered, regardless of whether the recipient or the county is at fault. Those regulations 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 (emphasis added). The FoodShare Handbook (FS Handbook) reiterates the above mandate by instructing county agencies as follows:

Establish a claim against any FS FoodShare group that has received more FS than it was entitled to receive. There are three types of overpayment claims: client error, nonclient error, and Intentional Program Violation (IPV Intentional Program Violation). *Collect claims for all types of errors*, regardless of the date of origin. Only collect the amount of the claim. . . .

FS Handbook § 7.3.1.1. (emphasis added).

The main thrust of the respondent's position here is simply that reverse mortgages required the deletion of shelter expenses from petitioner's FS budget; when that expense was removed from petitioner's budget, an overpayment was identified. In Electronic Case Comments the respondent notes:

[Petitioner's husband] called asking about mortgage verification not being accepted. In looking at it in ECF, I saw that it was a reverse mortgage which means that the expense of the helter is not being paid by the client but being deducted from the equity in the home and this expense should not be counted. Checked with sups who sent it to the help desk for confirmation and received this answer: "After some research, it appears that payments are not required on reverse mortgages, unless the home is sold or the the homeowner moves out. Since payments are not required, this cannot be allowed as a shelter expense."

Exhibit 2.

The petitioner credibly testified that her reverse mortgage does not operate in this fashion. Instead, her reverse mortgage pays her monthly mortgage obligation. While the help desk's reported research, as noted in the Case Comments, into reverse mortgages is not necessarily incorrect, I note that it refers to reverse mortgages in general. It does not reflect the actual set-up of petitioner's reverse mortgage. The record does not reveal that the respondent has pursued any further information regarding the terms of petitioner's reverse mortgage or any other mortgage obligations.

The respondent concedes that it is unaware of any FS regulations or policy pertaining to reverse mortgages. The respondent provided the Medical Assistance policy found at *Medicaid Eligibility Handbook*, § 16.7.2.1., which gives the following instructions on how to treat a reverse mortgage.

A reverse mortgage loan is a loan, or an agreement to lend, which is secured by a first mortgage on the borrower's principal residence. The terms of the loan specify regular payments to the borrower. Repayment (through sale of the residence) is required at the time all the borrowers have died, or when they have sold the residence or moved to a new one.

Treat reverse mortgage loan payments to the borrower as assets in the month received and thereafter. Do not count undisbursed funds (not yet paid to the borrower) as assets. They are considered equity in the borrower's residence.

Program handbooks can serve as helpful guides, but they cannot serve as the entire basis for an overpayment claim. The respondent was unable to contradict the information provided by petitioner, which indicated that petitioner does, in fact, still have a mortgage obligation that is paid through the use of the reverse mortgage proceeds. I could see the logic of respondent's argument in the typical reverse mortgage situation, i.e., an individual's house has been paid for, and the reverse mortgage is employed to allow that individual to receive monies drawn on his/her home equity. That is apparently not the case here. Petitioner reports that she has a mortgage that she is obligated to pay, the respondent has not identified any legal or even a policy basis for its determination that the existence of a reverse mortgage requires the removal of a shelter expense deduction, and therefore the respondent has not established its basis for the claimed overpayment.

CONCLUSIONS OF LAW

The respondent has not established that it correctly established an overpayment of FS benefits to petitioner based upon deletion of a shelter deduction related to the petitioner's reverse mortgage.

THEREFORE, it is

ORDERED

That, this matter is remanded to the respondent to rescind petitioner's liability for overpayment claim [REDACTED]. All actions required by this Order shall be completed within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of April, 2014

\sPeter McCombs
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 April 4, 2014.

Vilas County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability