



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/155353

PRELIMINARY RECITALS

Pursuant to a petition filed February 05, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Washburn County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on April 17, 2014, at Shell Lake, Wisconsin.

The issues for determination are whether the petitioner is responsible for repaying his son's FoodShare overpayment and whether the Department can intercept her tax refund to recover that overpayment.

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: Roxanne Livingston
Washburn County Department of Social Services
110 W 4th Avenue
PO Box 250
Shell Lake, WI 54871

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of Washburn County.
2. The petitioner and his son lived in the same household but did not purchase and prepare food together in 2012 and 2013. His son is 27 years old.

3. The county agency notified the petitioner's son that he had a \$4,023 overpayment of FoodShare from September 2012 through May 2013 because the agency incorrectly added his parents to his FoodShare household even though he informed them that he did not purchase and prepare food with them. The petitioner's son did not appeal this finding.
4. The county agency seeks to recover the overpayment from the petitioner and his spouse by intercepting their state income tax refund.

DISCUSSION

Federal regulations require state agencies to “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. One of the ways that the agency recovers overpayments is by intercepting the recipient's income tax refund. At least annually, the Department of Workforce Development must certify to the Department of Revenue the amounts it has determined it may recover because of an overissuance of food stamp benefits. Wis. Stat. § 49.85. The Department of Workforce Development must notify the recipient that it intends to certify the overpayment to the Department of Revenue for a setoff from his state income tax refund and inform his of his right to appeal that decision. Wis. Stat. § 49.85(3).

The petitioner's right to a hearing is described in Wis. Stat. § 49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The petitioner may appeal the underlying overpayment because the claim was made against his son and he was not notified of it. The background of the agency's claim is that the petitioner's 27-year-old son, an ongoing FoodShare recipient, moved back in with him and his wife in 2012. Their son reported to the agency that he had moved in with them but that he purchased and prepared food separately from them. The county incorrectly included the petitioner and her husband in their son's FoodShare household. It later determined that its error caused him to receive \$4,023 more in FoodShare than he was entitled to from September 2012 through May 2013. He did not appeal this finding within 90 days, so he cannot challenge the overpayment. *See* Wis. Admin. Code, § HA 3.05(3)(a). The agency contends that because the petitioner and his wife lived with their son, they are responsible for repaying the overpayment.

The agency's overpayment claim against the petitioner depends upon a provision in FoodShare regulations that states that those responsible for paying an overpayment include “[e]ach person who was an adult member of the household when the overpayment...occurred. 7 CFR § 273.18(a)(4)(i). But the fact that people live under the same roof does not necessarily make them part of the same household. According to 7 CFR § 273.1(a) a household can consist of any of the following individuals or groups of individuals:

- (1) An individual living alone;
- (2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
- (3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

Children who are over 21 years old are not automatically considered part of their parents' household. 7 CFR § 273.1(b)(ii).

The petitioner's son was an individual living with him and his wife but he was customarily purchasing and preparing meals for home consumption separate and apart from them. This means that they were not part of his household. Indeed, the basis of the agency's claim against the petitioner's son is that it treated the petitioner and his wife as part of their son's household when they actually were not; if their son had been part of their household, they would have no claim against him. Nothing in the regulations allows the agency to recover from those *wrongly* listed as members of the household when the overpayment occurred. Doing so could lead to the absurd result of persons with no connection to a household becoming liable for the overpayment of a person who fraudulently listed them in the household. The agency can only recover from those who were members of the household when the overpayment occurred. It cannot recover the FoodShare overpayment from the petitioner and his spouse because they were not members of their son's household when the overpayment occurred. Because it cannot recover the overpayment, it cannot intercept his tax refund.

CONCLUSIONS OF LAW

1. The petitioner is not responsible for the \$4,023 overpayment of FoodShare payments made to his son from September 2012 through May 2013 because he was not a member of his son's household for FoodShare purposes during that period.
2. The Department may not intercept the petitioner's state income tax refund to recover an overpayment of FoodShare received by his son.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it end all attempts to recover from the petitioner the overpayment of FoodShare made to his son from September 2012 through May 2013. In addition, the Department and county agency shall take all steps necessary to ensure that the petitioner's income tax refund is not intercepted to recover any such overpayment.

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 25th day of April, 2014

\sMichael D. O'Brien
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 April 25, 2014.

Washburn County Department of Social Services
Public Assistance Collection Unit