



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/155676

PRELIMINARY RECITALS

Pursuant to a petition filed February 22, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on April 03, 2014.

The issue for determination is whether the agency correctly determined that petitioner was liable for an overpayment of FS.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

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

By: Bonnie Laub

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On August 30, 2013 petitioner signed an application for FS requesting FS for a household of 8 persons: himself, his wife, his adult daughter, and 5 minor children.

3. Petitioner's 5 minor children were not residing with him at the time of application, had not been since May 7, 2013, when they were placed with their grandmother via a court order, and were not living with him through November 2013.
4. Petitioner received FS for a household of 8 from September – November 2013.
5. On January 3, 2014 the agency issued a notice of decision to petitioner stating that he was liable for an FS overpayment (claim # [REDACTED]) in the amount of \$2404 due to client error in not reporting accurate household members.

DISCUSSION

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). 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(a)(2). In this case, the agency found an overpayment against petitioner due to client error in not reporting accurate household members.

In determining the amount of FS to allot each household, the agency must look at the household composition as it affects eligibility. See *FS Handbook*, §3.3.1, available online at <http://www.emhandbooks.wi.gov/fsh/>. The amount of persons residing in the household obviously impacts the amount of FS issued. See *FS Handbook*, §8.1.2. Petitioner did not disagree that the 5 minor children did not reside in his home during the three months sought for the overpayment. However, he testified that he was of the belief that they would return to the home and that the FS received was used to purchase food for the children when they resided with their grandmother. I can find no exception to the residency/household composition policy that petitioner seeks. The only exception for residency is the "temporary absence" policy, but the absence can be no longer than 2 full consecutive calendar months. See *FS Handbook*, §3.2.1.2. By the time petitioner applied in August, the children were already out of the home for 3 months. The policy for determining residence when children are involved also provides this example:

Example 2: Fran (mom) has legal custody of Clarence. However, Clarence resides with grandma, and occasionally visits mom. Clarence is considered "residing" with grandma and would be included in Grandma's food unit if she applied. Clarence would not be included in Mom's food unit since he is residing with Grandma.

See *FS Handbook*, §3.2.1.1.

I have reviewed the calculations. The county correctly determined the amount of the overpayment. Based on all of the above, I must find that the county has established its claim for overpayment. The petitioner can offset his overpayment with any current FS benefits, as opposed to making cash payments or having his taxes intercepted.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. 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.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner was liable for an overpayment of FS (claim # [REDACTED]).

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 Milwaukee,
Wisconsin, this 30th day of April, 2014

\sKelly Cochrane
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 30, 2014.

Waukesha County Health and Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability