



FH

[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/156331

PRELIMINARY RECITALS

Pursuant to a petition filed March 26, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on August 07, 2014, at Oshkosh, Wisconsin. At the request of petitioner, hearings set for May 5, 2014 and May 28, 2014 were rescheduled. At the request of the parties, the record was held open for consecutive briefs by the parties to the Division of Hearings and Appeals (DHA). Both parties timely submitted their briefs to DHA which are received into the hearing record.

At the request of the parties, the August 27, 2014 hearing was consolidated for petitioner's mother, [REDACTED] and her father, [REDACTED] [REDACTED] in Case Nos. FOP/156327 and FOP/156330 and the petitioner in the above-captioned case.

The issue for determination is whether there is any remaining issue in dispute for [REDACTED] [REDACTED] regarding the county agency seeking recovery of FoodShare (FS) overpayments to the petitioner during the total period of March 7, 2011 to October 31, 2013 in the total amount of \$15,224.00, due to the county agency stipulating to withdraw its FS overpayment from recovery from the petitioner ([REDACTED] [REDACTED]).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Attorney Mary Anne Mueller
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:
 Gary M. Wolkstein
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County who resided with her mother, [REDACTED], and her father, [REDACTED]. Ex. A.
2. Petitioner's mother continues to be married to her father, [REDACTED], during the entire FoodShare (FS) overpayment period of March 7, 2011 to October 31, 2013. Ex. A.
3. The county agency established with reliable evidence that petitioner's father resided with the petitioner at [REDACTED] in [REDACTED], during the entire FS overpayment period of March 7, 2011 to October 31, 2013.
4. The petitioner's mother applied for FS benefits on March 7, 2011, and in that application her mother falsely failed to report that her husband resides with her in her household and his earned income. Ex. B. During the hearing, petitioner's mother admitted that she lied on that March 7, 2011 FS application, and also admitted she failed to report her husband in the home on any required "change report" or renewal application to the county agency during the overpayment period.
5. The petitioner's mother was approved for FS benefits for a household of four (without her husband). Petitioner's mother received FS benefits during the entire period of March 7, 2011 through October 31, 2013 for a FS household of five. Her mother received FS benefits of \$6,699 from March 7, 2011 through February 29, 2012; received FS benefits of \$5,056 from March 1, 2012 through February 28, 2012; and then she received \$3,479 in FS from March 1, 2013 through October 31, 2013 for the total amount of \$15,224.00.
6. On December 13, 2013, the county agency sent written Notification of FS Overissuance to petitioner (and her mother and father) informing her that during the period of March 7, 2011 to October 31, 2013 she was issued a FS overpayments in the total amount of \$15,224.00, due to petitioner's mother failure to timely report accurate household composition (her husband in her home) and his earned income and their self-employment income due to client error resulting in the presumption that the household was above the FS income eligibility limits.
7. In its August 7, 2014 written stipulation to DHA, Attorney Mary Anne Mueller (and ESS Leslie Vosters) stipulated that: "The Winnebago County Department of Human Services hereby withdraws the total overpayment claim made against [REDACTED] (FOP/156331) [REDACTED], [REDACTED] and [REDACTED], for the period beginning on March 7, 2011 and ending on October 13, 2013, in the amount of \$15,224.00."
8. The county agency continues its FS recovery against petitioner's mother, [REDACTED] and her father, [REDACTED] in DHA Case Nos. FOP/156327 and FOP/156330.

CONCLUSIONS OF LAW

There is no longer any issue in dispute regarding the FS overpayment against [REDACTED] because the count agency has withdrawn its total FS action against the petitioner, as stated in Finding of Fact #7 above.

THEREFORE, it is

ORDERED

The matter is remanded to the county agency with instructions to take any necessary administrative action to remove and rescind the FS overpayment against the petitioner, [REDACTED] [REDACTED], as stated in Finding of Fact #7 above, 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 3rd day of October, 2014

\sGary M. Wolkstein
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 October 3, 2014.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney Mary Mueller