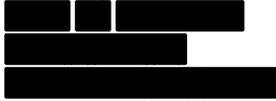




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/156433

PRELIMINARY RECITALS

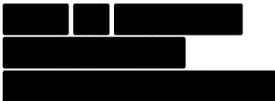
Pursuant to a petition filed March 31, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare (FS) benefits, a telephone hearing was held on June 10, 2014. A hearing previously scheduled for May 13, 2014, was rescheduled at petitioner's request.

The issue for determination is whether the Department may recover from petitioner an alleged overpayment of FS benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Bob Klingforth
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. Petitioner resided with her husband until September, 2011, at which time she moved to [redacted]. Petitioner has not resided with her estranged husband since September, 2011.

2. After an investigation the agency determined that petitioner should have been included in the household. It obtained his income information and determined that P.C. was overpaid a total of \$17,406 in FS from August, 2009 through June, 2012.
3. By notices dated July 9, 2012, the agency informed P.C. that she was overpaid that amount in four separate claims, nos. [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The notices were sent to P.C. at the address she shares with petitioner. The notices stated that only P.C. was liable for the overpayment; there was no mention of petitioner being liable. P.C. did not appeal.
4. In 2013 petitioner discovered that the agency was attempting to collect the overpayment from him. He filed this appeal.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). 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(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

The FS Handbook, Appendix 7.3.1.2 provides specifically relative to this case:

All adult or emancipated minor food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

Italics in original. Only adult food unit members who were members *at the time that the overpayment occurred* are liable for the overpayment. Notably, even an adult who resides in the household but is not in the food unit, is not liable.

At hearing, the petitioner established that she has not resided with her estranged husband subsequent to September of 2011. The petitioner credibly testified that she left her husband in September of 2011, due to domestic violence, and has not lived with him since. Divorce proceedings are currently pending. Petitioner explained that she lived with her brother for approximately one year after she left her husband, and thereafter lived in an apartment in [REDACTED], Wisconsin, for one year before relocating to Milwaukee, Wisconsin, in September of 2013. She stated that she was not aware that her estranged husband had applied for W-2 benefits, Emergency Assistance, or FS benefits after she moved.

The respondent's representatives' testimony indicated that petitioner was added to her husband's case pursuant to a request by her husband in a September, 2011, change report. However, the respondent did not establish that petitioner resided with her estranged husband during the overpayment period, nor did it establish that they purchased or prepared food together.

Based on the record before me, I must conclude that petitioner is not liable for the \$954.00 FS overpayment (Claim No. [REDACTED]) owed by her estranged husband as she was not a FS food unit member at the time the overpayment occurred.

CONCLUSIONS OF LAW

Petitioner is not liable for the 954.00 FS overpayment (Claim No. [REDACTED]) owed by her estranged husband because petitioner was not an FS food unit member during the period of overpayment.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to remove petitioner as a liable individual on Claim No. [REDACTED]. The agency shall do so within 10 days 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 27th day of June, 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 June 27, 2014.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney Patricia DeLessio