



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/156569

PRELIMINARY RECITALS

Pursuant to a petition filed April 1, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Waupaca County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on May 28, 2014, by telephone. A hearing set for April 30, 2014 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner was overpaid FS because she was given credit for a rent expense when her parents paid the rent.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Kathy Hobbs
Waupaca County Dept. of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County.
2. In 2013 petitioner received FS in a household that included her adult cousin J.P., J.P.'s two child over whom petitioner has guardianship, and a third minor child. The five lived in a single-family house in which petitioner's parents and adult brother also lived. The parents and brother were not part of petitioner's FS group.

3. In petitioner's FS calculations during 2013 she was given credit for paying \$825 per month rent along with utilities.
4. In November, 2013, petitioner contacted the county to report that her father had died and to add her mother to the FS group (petitioner complains that she did not make that request but the dispute is irrelevant to the issue in this case). While processing the person-add petitioner's worker discovered that petitioner's parents also had been claiming to pay \$825 per month rent on their separate Medical Assistance related case.
5. After investigating, the county determined that petitioner's parents, not petitioner, had been paying the monthly \$825 rent. The county therefore processed an FS overpayment claim by taking the rent payment out of petitioner's FS budget. The county determined that petitioner was overpaid \$1,909 in FS from January 20 through November 30, 2013.
6. The county informed petitioner that she was overpaid by a notice dated March 6, 2014, claim no. [REDACTED].
7. Petitioner's parents reported to the county, on their separate benefits case, that they paid \$825 per month rent. Petitioner's mother regularly wrote the rent check to the landlord.

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.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FS Handbook, App. 4.6.7. Needless to say, an \$825 per month rent expense can serve to increase FS even if the deduction is only a portion of the rent.

It is undisputed that petitioner's mother actually paid the rent to the landlord during the period in question. Petitioner testified that she gave her mother cash to help pay the rent. The problem is that there is no way to verify how much petitioner chipped in and how much of that was used for the rent. There is nothing from petitioner's mother supporting that statement. Had petitioner reported the situation when she applied for FS in Waupaca County it is possible that a budget for both groups could have been formulated. Instead both groups claimed to pay the full rent expense, and in hindsight I must agree with the county that the group that actually wrote the checks is the one that should get credit for paying the rent.

CONCLUSIONS OF LAW

The county correctly determined an FS overpayment because petitioner erroneously reported that she paid \$825 per month rent when in fact petitioner's mother paid the rent.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

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 June, 2014

\sBrian C. Schneider
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 4, 2014.

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