



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/156590

PRELIMINARY RECITALS

Pursuant to a petition filed April 01, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Waupaca County Department of Social Services in regard to FoodShare benefits (FS), a telephone hearing was held on April 23, 2014, at Wautoma, Wisconsin.

The issue for determination is whether petitioner is liable for an 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: Susan Ziegeweid

Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Waushara County.
2. Petitioner and his wife have been estranged since approximately April, 2013, and have not lived together since that time.

3. Petitioner's wife, CD, applied online for FS benefits in May and October of 2013. On each occasion, CD incorrectly reported that petitioner was living in her home.
4. The respondent issued FS benefits to CD and petitioner pursuant to the information provided by CD.
5. The respondent learned that petitioner was not living with CD; subsequent to an investigation, the respondent established an overpayment of FS benefits in the amount of \$863.00 during the period of April 26, 2013, through September 30, 2013 (Claim no. [REDACTED]).
6. An investigation into the matter by O'Brien and Associates confirmed that petitioner had not lived with CD since early 2013.
7. Petitioner did not apply for, receive, or utilize any FS benefits received by CD.

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(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). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a); FS Handbook, § 7.3.1.2.

The question in the instant appeal is whether the petitioner is liable for the overpayment. With regard to who is liable for the overpayment, the FS Handbook, §7.3.1.2 reads as follows:

All adult or emancipated minors that were included in the household or should have been included in the household at the time the overpayment occurred are liable for the repayment of the overissuance of FS benefits. If a liable member moves to another household, responsibility of the overpayment is maintained and follows that individual to the new household.

Liability for a FoodShare overpayment is not split evenly among liable parties. Liable individuals are responsible for 100% of the overpayment until the full debt is repaid in full.

With regard to what constitutes household composition, FoodShare policy states:

H - Households:

Households consist of all persons living in or temporarily absent from the same residence. It is important to enter all household members into CARES to ensure that the correct eligibility determination is made.

U - Food Units:

One or more persons who live in the same household and purchase and prepare food together for home consumption. This group is tested for eligibility together. There are some exceptions for boarders, foster persons, and certain elderly and disabled individuals.

FS Handbook, § 3.3.1.1.

It is clear that FoodShare overpayment claims can only be made against food unit members. Petitioner was never a member of his estranged wife's food unit, except as a result of being unwittingly included on CD's FS applications. It would be illogical to conclude that even if fraudulently included in a food unit, the respondent could hold petitioner liable for a FS overpayment. It is undisputed that petitioner did not live in CD's household after April, 2013, that he did not purchase and prepare food with CD, and that he was not only *temporarily* absent from the household. He remains estranged and living separately from CD. Petitioner testified that he was aware that CD received FoodShare benefits, but never knew that CD included him on her applications. Based upon the record before me, I conclude that petitioner was not a household or Food Unit member of CD during the overpayment period, and is not liable for said overpayment.

CONCLUSIONS OF LAW

1. Petitioner was not a household or Food Unit member of CD during the overpayment period.
2. Petitioner is not liable for the overpayment of FS benefits in the amount of \$863.00 during the period of April 26, 2013, through September 30, 2013 (Claim No. [REDACTED]).

THEREFORE, it is

ORDERED

That this matter be remanded to the respondent with instructions that, within 10 days of the date of this decision, it rescind petitioner's liability for FoodShare overpayment Claim No. [REDACTED].

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 30th day of May, 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 May 30, 2014.

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