



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/157709

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Wood County Human Services - WI Rapids in regard to FoodShare benefits (FS), a hearing was held on June 12, 2014, at Medford, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Beulah Garcia

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Taylor County.
2. The county agency seeks to recover \$6,441 in FoodShare provided to the petitioner from January 1, 2013, through April 30, 2014, because the father of one of her children, who lives with her, was not included as part of her FoodShare household.

3. The petitioner has three children. The most recent was born around January 2013. [REDACTED] is the father of that child. The petitioner reported this birth to the county agency on January 7, 2013.
4. The petitioner and [REDACTED] have lived together since before January 2013. They purchased and prepared food separately before their child was born.
5. The FoodShare agency's worksheet showing its overpayment calculations did not show any of the income or deductions used to determine the overpayment amounts for March through May 2013, for December 2013 through January 2014, or for April 2014.
6. [REDACTED] pays child support. The agency did not consider this when calculating the petitioner's FoodShare overpayment.
7. [REDACTED] and the petitioner each pay a portion of their house payment. The FoodShare agency only considered the portion paid by the petitioner when calculating her shelter deduction as part her overpayment.
8. For a five-person household, 200% of the federal poverty level was \$4,502 from February through October 2013 and \$4,596 from November 2013 through April 2014. *FoodShare Wisconsin Handbook*, § 8.1.1. The petitioner's gross household income was \$4,732.88 in July 2013 and \$5,369.35 in March 2014. Her gross household income was below 200% of the federal poverty level in all other months in which that income was included on the agency's overpayment worksheet.

DISCUSSION

Federal rules require state agencies to "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. FoodShare eligibility depends upon the number of persons and total income of a household. A FoodShare household consists of all persons who purchase and prepare food together. If a single person lives with others but purchases and prepares food separately, she can be considered part of a separate household. 7 CFR § 273.1(a). Children under 22 years old who live with a parent are always considered part of that parent's household. 7 CFR § 273.1(b)(1)ii. A person cannot be considered part of more than one FoodShare household in the same month. 7 CFR § 273.3(a). When a child under 22 lives with parents who live together, both that child's parents must be part of the same household because if they were not it would be impossible for the child to be included in the household of each parent but also be part of only one household, as the law requires.

The county agency seeks to recover \$6,441 in FoodShare provided to the petitioner from January 1, 2013, through April 30, 2014, because [REDACTED], the father of her oldest child, lives with her but was not reported as part of her household. She admits that they have been living together but contends that a worker told her that because they were not married and did not purchase and prepare food together, she could be considered part of a separate FoodShare household. That worker did not testify. File notes from June 5, 2012, indicate that the petitioner reported that she and [REDACTED] did not purchase and prepare food together. As a result, he was not included in her FoodShare household. However, file notes from December 4, 2012, indicate that she reported that he had left the household on November 1, 2012. Because the file notes indicated she had already reported her pregnancy to the worker, I am skeptical that at that point she continued to believe he would not be part of the household when the child was born. However, that worker who made the notes did not testify, so I could not question her. Ultimately, whether the petitioner reported him in the house or out is irrelevant for determining her FoodShare overpayment because they had been considered separate households for FoodShare purposes and could continue to be considered separate until the baby was born. At that point, even if the petitioner was misled by or misunderstood her worker, the agency must recover any overpayment that occurred because [REDACTED] was not considered part of her household.

Still, the agency has the burden of proving by the preponderance of the credible evidence that it has properly determined the amount of any overpayment. This proof requires adequate documentation of its calculations. It prepared a worksheet showing the calculations it used to determine the overpayment. But the columns with the corrected budgets, which it used to show the overpayment amounts each month, did not show any of the relevant figures other than the allotment provided and the amount it determined the petitioner was entitled to for March through May 2013, December 2013 through January 2014, or April 2014. The missing data included the asset, gross income, and net income limits; the household's earned and unearned income; and all of the various deductions the petitioner might be entitled to. The asset and income limits are available elsewhere, but I cannot reconstruct the agency's calculations without the other data. It has not met its burden of proof and thus cannot recover any benefits paid in those months.

The next issue is whether the agency can recover benefits provided in January 2013. Recipients must report a change of circumstances within 10 days. 7 CFR § 273.12(a)2. Agencies must act on those changes the month after the reported change is due. 7 CFR § 273.12(c)(2). It is unclear when the petitioner's last child was born, but she reported the birth on January 7, 2013, and there is no claim that this report was untimely. As noted, until that child was born, the petitioner and ██████ could be considered part of two separate households, even if they were living together. Assuming that she reported the birth on time, that change of circumstances should have been reflected in the amount of FoodShare she received beginning February 2013. The agency's worksheet indicates that is when it first counted the child as part of the household. The *FoodShare Wisconsin Handbook*, § 7.3.2.1., instructs workers that "[w]hen calculating the overissuance, consider the FS group's reporting requirements." If the petitioner had properly reported that ██████ was part of her household in January 2013 (or the agency had recognized that he was in the household), it would have first affected her benefits in February 2013. Because of this, the agency cannot recover the benefits issued in January 2013.

The petitioner contends that the agency overstated ██████'s net income because it did not deduct his child support payments. She also points out that she had received credit for only half of the payment on her house as part of her shelter deduction because the other half was attributed to ██████. If ██████ is considered part of her FoodShare household, then his portion of the house payment should also be considered when determining the overpayment. In order to receive FoodShare, recipients must pass both a gross and net income test. Households whose gross income exceeds 200% of the federal poverty level are not considered categorically eligible for benefits. *FoodShare Wisconsin Handbook*, § 4.2.1.1. Gross household income includes all income from any source unless FoodShare regulations specifically exclude it. 7 CFR § 273.9(b). The exclusions, which are found in 7 CFR § 273.9(c), do not include child support payments or shelter costs. This means that those items are only relevant for months in which the petitioner's gross household income is less than 200% of the federal poverty level. For a five-person household, the size of the petitioner's, 200% of the federal poverty level was \$4,502 from February through October 2013 and \$4,596 from November 2013 through April 2014. *FoodShare Wisconsin Handbook*, § 8.1.1. The agency's worksheet indicates that her gross income exceeded this limit was July 2013, when her income was \$4,732.88, and March 2014, when her income was \$5,369.35. She received \$377 in FoodShare July 2013 and \$632 in March 2014. Because she was not eligible for any benefits in those months, she must repay these amounts.

The FoodShare agency's worksheet indicates that the petitioner's net household income exceeds the program's limit in February, June, August, October, and November 2013. It also indicated that she received \$224 more than she was entitled to in September 2013 and that she was underpaid by \$2 in February 2014. These amounts do not give the petitioner credit for child support that ██████ paid or for the full amount of the house payment. I will order the agency to consider the child support and full house payments and recalculate the overpayment for those months. The petitioner shall cooperate with the agency to ensure that it can obtain these amounts. If she does not, the agency does not need to consider them when recalculating the overpayment.

CONCLUSIONS OF LAW

1. The petitioner did not receive an overpayment of FoodShare in January 2013.
2. The FoodShare agency has not presented sufficient evidence to establish that any overpayment occurred from March through May 2013, from December 2013 through January 2014, or in April 2014.
3. The FoodShare agency did not present enough evidence to determine the amount of the overpayment that occurred in February, June, August, September, October, and November 2013 or the amount of underpayment she received in February 2014..
4. The petitioner must repay the \$1,009 in FoodShare she received in July 2013 and in March 2014 because her income exceeded the program's gross income limit.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it redetermine the amount of the petitioner's FoodShare overpayment. When doing so it shall end its efforts to recover the portions of the overpayment that allegedly occurred in January 2013, from March through May 2013, from December 2013 through January 2014, and in April 2014. It shall also recalculate the overpayment that occurred in February, June, August, September, October, and November 2013 and the amount of underpayment she received in February 2014. When recalculating her benefits, it shall give her a deduction as allowed by law for any child support [REDACTED] pays and for the full amount of the house payments she and [REDACTED] made. If she disagrees with these calculations, she may ask for a new hearing. Her appeal of the \$1,009 overpayment she received in July 2013 and March 2014 is 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 7th day of July, 2014

\sMichael D. O'Brien
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 July 7, 2014.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability