



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158003

PRELIMINARY RECITALS

Pursuant to a petition filed May 30, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Vernon County Human Services in regard to FoodShare benefits (FS), a hearing was held on July 30, 2014, at [redacted], Wisconsin.

The issue for determination is whether the Department erred in its determination of a \$6,130 overissuance of FS.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By: Bob Uebele

Vernon County Human Services
318 Fairlane Drive, Suite 100
[redacted] WI 54665-6131

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Vernon County.
2. Petitioner was head of a FS case including herself and four children and her husband [redacted]

3. From August 2011, petitioner has been head of a FS case with an address listed on [REDACTED] in [REDACTED]. That home is owned by [REDACTED] [REDACTED].
4. In late 2011, [REDACTED] took a job working at [REDACTED] [REDACTED] in [REDACTED]. [REDACTED] had no other address and returned to Wisconsin regularly.
5. On 1/1/12 petitioner submitted an online six-month report form. She failed to report land contract income from the tavern in the amount of \$525.37 per month. The contract for monthly income was signed on 11/9/11. On the report form, petitioner also failed to report spousal maintenance of \$400 from a 4/26/10 divorce settlement.
6. Petitioner received land contract income from the sale of a tavern from January to July 2012.
7. Petitioner and [REDACTED] had a child in October and were married in December 2012.
8. The couple filed a joint tax return for 2012. [REDACTED]'s income was \$42,927.
9. On April 3, 2014, the agency issued a claim of overissuance in the amount of \$6,130 for the period from 2/1/12 to 12/31/12.
10. Petitioner appealed.

DISCUSSION

The Department is required to recover all overpayments of public assistance benefits. 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)(emphasis added).

Those regulations also provide, in relevant part, as follows:

- (a) Establishing claims against households. All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR § 273.18. The FS Handbook similarly provides that an adult a person who is 18 years old or older and a member of the food unit at the time the overpayment occurred is liable for repayment of any overissued FS benefits. FS Handbook §7.3.1.2. All nonexempt income must be budgeted in determining FS. 7 C.F.R. §273.9(b).

Petitioner is required to report any change within ten (10) days. FS Handbook, § 6.1.3. This applies to earned income, unearned income, employment or household composition. When an individual reports a change which results in an increase in FS benefits, the county agencies are to implement that change effective the first of the month following the month of report. See BWI Operations Memo # 01-23, issued on April 17, 2001.

In a Fair Hearing concerning the propriety of an overpayment of benefits, such as this, the county agency has the burden of proof to establish that the action taken by the county was proper. Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

In this case, the agency contends that there was an overissuance from 2/1/12 to 12/31/13. Part of the reason is that petitioner failed to report [REDACTED]'s income at [REDACTED] [REDACTED]. But, petitioner reported on the 1/1/12 SMRF that [REDACTED] was not in the home. She explained at hearing that he was drinking a lot and had

left for ND. For some reason, the agency left [REDACTED] on the case and kept providing a FS allotment for him. The agency now claims that petitioner was untruthful in failing to report his income on the 1/1/14 SMRF.

Petitioner's testimony does not make sense. She testified that [REDACTED] returned to the home in April 2012 and stayed for two weeks and moved out again in June. I also note that despite her claims that he was never home and was drinking and living at a friend's when in Wisconsin in 2012, she gave birth to their son on October 2012 and they were married in December 2012. Petitioner contends that the couple was having problems and [REDACTED] was not really living in the home. But, [REDACTED] owned the home, listed the home as his address, and the couple filed a joint 2012 federal tax return with the [REDACTED] address. Petitioner lived in [REDACTED]'s home with [REDACTED] paying all expenses and thus supporting the family. The contention that he was not living as part of the household is not credible. It seems that [REDACTED] was working a lucrative job in NC on a temporary basis. [REDACTED] was temporarily absent only and under the rules such income must be counted. See *Foodshare Wisconsin Handbook* § 3.2.1.2.

With regard to the claim that petitioner failed to report the court-ordered maintenance paid to her in the amount of \$400 per month. Petitioner claims these payments were inconsistent. While this may be true, petitioner failed to even report it on her SMRF. The better choice would have been to report the income but notify the agency in the months it was not received. Petitioner's attitude toward income and reporting appears to have been so apathetic that she cannot rebut any of the agency's claims at this point. She did not provide any evidence to corroborate her claim that the maintenance, ordered by a circuit court, was not paid.

Petitioner also failed to report other sources of income and offered only illogical explanations at hearing such as the assertion that the tavern sale was rescinded months after. But, the SMRF was completed only a few weeks following the sale while petitioner was indeed collecting or expecting to collect on the land contract. She failed to include the related income which should have been reported.

Based upon all of the above, I conclude that petitioner was overissued \$6,130 in FS benefits which are subject to recovery.

CONCLUSIONS OF LAW

The agency did not err in its determination of a \$6,130 overissuance of FS.

THEREFORE, it is ORDERED

That this appeal 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.

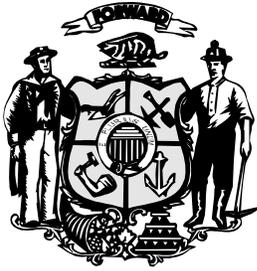
APPEAL TO COURT

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 13th day of August, 2014

\sJohn P. Tedesco
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 August 13, 2014.

Vernon County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability