



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/158140

PRELIMINARY RECITALS

Pursuant to a petition filed June 6, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Oconto County Department of Health And Human Services in regard to FoodShare benefits (FS), a hearing was held on July 29, 2014, at Oconto, Wisconsin. A hearing set for June 17, 2014, was rescheduled at the petitioner's request. The hearing record was held open for 10 days for submission of additional documents by the parties.

The issue for determination is whether the petitioner was overpaid FS benefits from May 1, 2012 through January 31, 2014. Specifically, the factual question is whether the petitioner's wife (and her income) should have been included in his FS household during the period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Ms. Kim Reifsteck, fraud investigator
Oconto County Department of Health And Human Servi
501 Park Avenue
Oconto, WI 54153-1612

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Oconto County.
2. The petitioner received FS as a household of one person from at least May 2012 through January 31, 2014.
3. In May 2014, the local agency issued written notices of overpayment to the petitioner, advising that he had been overpaid FS in the following amounts for the following periods: May through December 2012 for \$395.00 (claim # [REDACTED]), January through December 2013 for \$479.00 (claim # [REDACTED]), and January 2014 for \$26.00 (claim # [REDACTED]). Repayment Agreements on all three claims were issued to him on May 20, 2014. The petitioner timely appealed.
4. At all times during the May 2012 through January 2014 period, the petitioner resided in his home located at [REDACTED], Oconto, Wisconsin. His income consists of \$1,192.00 (current) monthly in Social Security. The petitioner denies that his spouse lived with him during these months.
5. The petitioner's spouse, [REDACTED] [REDACTED], has lived with the petitioner at his address of [REDACTED] [REDACTED], Oconto, Wisconsin since at least April 2012. She has had monthly income ranging from \$1,190 to \$2,156 from her Orange County, California pension, since at least April 2012.
6. The petitioner admits that his wife was living with him at his Oconto address from March 2014, forward.
7. The petitioner's testimony as to his wife's residence from April 2012 through February 2014, was not credible.

DISCUSSION

I. AN FS OVERPAYMENT MUST BE RECOVERED, REGARDLESS OF FAULT.

If an FS overpayment occurred during the period described above, the agency must make an effort to recover it. An FS overpayment claim is defined as:

273.18 Claims against households.

(a) *General.* (1) A recipient claim is an amount owed because of:

- (i) ***Benefits that are overpaid*** or
- (ii) Benefits that are trafficked. ...

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections ...

(4) The following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment or trafficking occurred:

...

(b) *Types of claims.* There are three types of claims:

(1) An Intentional Program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card .

(c) *Calculating the claim amount – (1) Claims not related to trafficking.* (i) As a State agency, you must go back to at least twelve months prior to when you become aware of the overpayment ...

(e) *Initiating collection actions and managing claims.*

(1) *Applicability.* State agencies must begin collection action on all claims unless the conditions under paragraph (g)(2) of this section apply..

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 (viewable at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm> . The above is a long way of saying that when an overpayment occurs, even if caused by agency error, the overpayment must be collected. There is a one-year time limit, however, for how far back in time the agency may go if the overpayment was due to agency error.

II. THE PETITIONER WAS OVERPAID FS FOR THE 5/1/12 – 1/31/14 PERIOD.

Neither the arithmetic of the agency’s overpayment determination nor the amount of the petitioner’s income is in dispute. Rather, the petitioner explained that he had provided all requested information and that his wife was not living with him during the alleged overpayment period.

The county investigator spoke to the petitioner on multiple occasions in 2013 and 2014. She requested an alternative, verifiable address for the petitioner’s wife. He did not provide her with any alternative address that could be verified. The petitioner lamely asserted that his wife had been living with friends or in hotels at various unspecified out-of-state locations for several years. Living in hotels would seem to be prohibitively expensive for a retired social worker, which ██████ purportedly is. This Judge has heard the “living with friends” explanation for lack of a verifiable alternative address many times, and it is rarely believable. Nothing presented in this case makes it believable. When asked by the investigator about the amount of his wife’s income, the petitioner initially professed not to know if she was retired or had any income. He later acknowledged her retirement, but professed not to know the amount of her pension, even though he testified that she allowed him to make ATM withdrawals from her checking account. The agency further established that ██████ opened a checking account, into which her pension check is deposited, at an Oconto bank in February 2012. Her Orange County pension checks began to appear as deposits into that account in March 2012. See, Exhibit 9. She (or someone with her PIN) then made at least three withdrawals monthly from an ATM in Oconto from April 2012 through March 2014 (with the exception of January, March, July, August, September, and December, 2013, which still featured at least one Oconto ATM withdrawal).

The petitioner also testified that ██████ was staying with him in Oconto when he had surgeries in “spring 2013,” June 2013, “fall 2013,” and December 2013. He and his wife shared a post office box in Oconto for a period of time, ending in 2014. She closed her California post office box in 2012. See, Transcript at 6 minutes, 10 seconds. The petitioner explained away her Oconto ATM withdrawals by saying that she sometimes allowed him to make withdrawals for her. The vague out-of-state residences that the petitioner testified to for his wife included unnamed places in California, Delaware and Florida. The wife did not testify. If ██████ was living in Florida, why would she have the petitioner make cash withdrawals in Wisconsin? Why wouldn’t she make her own withdrawal from a Florida ATM?

I share the agency's belief that [REDACTED] lived with her husband during the overpayment period. The agency has established its position with a preponderance of the credible evidence. Spouses who reside together are one FS household, and both of their incomes must be counted in the FS allotment calculations. 7 C.F.R. 273.1(b)(1)(i). Thus, the petitioner's household of two was over the income limit and not eligible for the FS benefits for the subject period.

CONCLUSIONS OF LAW

1. The Department correctly determined that the petitioner was overpaid FS from May 1, 2012 through January 31, 2014.

THEREFORE, it is

ORDERED

That the petition 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 2nd day of December, 2014

\sNancy J. Gagnon
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 December 2, 2014.

Oconto County Department of Health And Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney [REDACTED]