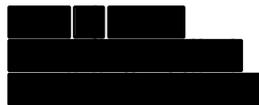




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158403

PRELIMINARY RECITALS

Pursuant to a petition filed June 19, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Calumet County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on July 14, 2014, at Chilton, Wisconsin.

The issue for determination is whether petitioner was overissued \$1,068 of FS benefits which are subject to recovery.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Lynn Brenner

Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Calumet County, and, at all times material hereto, resided at [redacted]
2. Petitioner received FS benefits during the period of January 1, 2013, through June 30, 2013, and also from November 1, 2013, through April 30, 2014. Exhibit 2.

3. Petitioner's wife, LF, was not included in his FS household during the periods specified in Paragraph 2, above.
4. At all times material hereto, petitioner's wife was employed at [REDACTED]. The Wisconsin Department of Transportation's records and the Wisconsin Government Accountability Board records indicate that LF's primary address is [REDACTED]. *Id.*
5. On May 19, 2014, the county agency issued notices to petitioner informing that he was overissued a total of \$1,068 in FS benefits from January 1, 2013, through June 30, 2013 (\$510.00; Claim no. [REDACTED]), and also from November 1, 2013, through April 30, 2014 (\$558.00; Claim no. [REDACTED]), due to client error because petitioner failed to report LF in his household. *Id.*
6. On June 19, 2014, petitioner filed an appeal with the Division of Hearings & Appeals.

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).

The county agency proved with a preponderance of the evidence that petitioner was overpaid FS benefits because LF resided with the petitioner during the overpayment periods and her income was not budgeted. At the hearing, petitioner did not contest that he failed to report his wife's income. Rather, he argued that LF does not reside with him, and therefore her income should not be counted in the first place. The petitioner testified that LF is at his home seven days per week, and sleeps at his home 3 nights per week. However, he states that LF is his personal care worker and does not eat his food, as he has a specialized diet.

The respondent does not contest the assertion that LF is petitioner's personal care worker. However, even if she is, LF must still be included in petitioner's household:

3.3.1.3 Relationship Rules

7 CFR 273.1(b)(1)

The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses and spouses,
2. Biological (unless no longer a parent because of adoption), adoptive, or step-parents and their children under the age of 22, and
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

FS Handbook §3.3.1.3. Despite the petitioner’s attempts to “reclassify” his spouse as simply his care provider, the evidence demonstrates that she does reside in his home, she utilizes the Bradley Lane address for mail and for registration purposes with governmental entities, and FS policy requires spouses to be included in FS households. Accordingly, I must conclude that the county agency correctly determined that petitioner was overissued \$1,068.00 of FS benefits which are subject to recovery.

CONCLUSIONS OF LAW

Petitioner was overissued \$1,068.00 of FS benefits which are subject to recovery.

NOW, THEREFORE, it is ORDERED

That the matter herein be and 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 18th day of August, 2014.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAMail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 18, 2014.

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