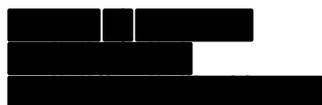




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158409

PRELIMINARY RECITALS

Pursuant to a petition filed June 19, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on July 16, 2014, at Madison, Wisconsin. At the request of the parties, the record was held open until July 30, 2014 for the county agency's initial closing argument, by August 18, 2014 for the petitioners' response, and for the agency's reply by August 28, 2014. In its initial brief, ESS Johnson sent a detailed summary in which the agency stipulated that petitioner's FS overpayment was "corrected" and reduced from \$3,384 to \$2,858, due to not including the month of July, 2013 in the overpayment period.

Both petitioners, [redacted] [redacted] (FS casehead) and [redacted] [redacted] agreed to the consolidation of their FS and MA cases into one hearing on July 16, 2014 for Case Nos. FOP/158407, FOP/158409, MOP/158408, and MOP/158410.

The issue for determination is whether the county agency is correctly seeking recovery of a reduced FoodShare (FS) overpayment of \$2,858 during the total period of March 1, 2013 to October 31, 2013, due to under-reporting of earned income for the petitioner and [redacted] [redacted] resulting in gross household income above the FS gross income eligibility limit for the entire overpayment period and joint and several liability for that overpayment.

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: Monica Johnson, overpayment specialist
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
 Gary M. Wolkstein
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County who resides with her fiancé, [REDACTED]. Petitioner resides with his two children, and one of those children is in common with Ms. [REDACTED].
2. [REDACTED] (the other petitioner) received FoodShare (FS) benefits during the period of March 1, 2013 to October 31, 2013 for a FS household of three.
3. The petitioner failed to report an increase in earned income when the FS household exceeded the 130% FPL reporting threshold of \$2,069 in January, 2013 and again in June, 2013, as required by the FS Handbook, 6.1.1.2.
4. Petitioner received proper notification of income reporting rules in notices sent to petitioner dated October 25, 2012 and January 18, 2013, but failed to meet those reporting requirements.
5. The petitioner was employed as a sales consultant at [REDACTED].
6. [REDACTED] was employed as an office manager at [REDACTED].
7. Petitioner and Ms. [REDACTED]'s combined income exceeded the reporting requirement of \$2,069 during January, 2013, and were required to report their income by February 10, 2013 (which affected benefits as of March 1, 2013). See Exhibits E1-10 and A1-2.
8. Petitioner failed to report his employment at [REDACTED] or Ms. [REDACTED]'s employment at [REDACTED] until his April 11, 2013 renewal review.
9. Ms. [REDACTED] inaccurately verified her earned income to the county agency, and her earned actually was approximately twice as much income as indicated on her income verification. See Exhibits E9 and E11.
10. On June 6, 2013, petitioner reported to the county agency that his employment at [REDACTED] ended. Exhibit B. However, petitioner failed to report to the agency that he began new employment at [REDACTED] on June 24, 2013. Exhibit E3. Petitioner was required to report that new employment at [REDACTED] by July 10, 2013, but failed to do so. That new income from [REDACTED] affected household income during the period of August 1, 2013 through October 31, 2013.
11. During October, 2013, the county agency received SWICA State wage matches for the petitioner and Ms. [REDACTED]. The State wage match for petitioner for the first and second quarter of 2013 confirmed the under-reporting by petitioner and his failure to report his new job at [REDACTED]. Exhibits B. The State wage match for [REDACTED] for the first, second, and third quarters confirmed Ms. [REDACTED] only reporting about half of her actual earned income. Exhibit B.
12. The gross household income (petitioner and Ms. [REDACTED]) was the following during the FS overpayment period: a) March, 2013 - \$4,356.70; b) April, 2013 - \$4,356.70; c) May, 2013 - \$6,071.60; d) June, 2013 - \$6,071.60; e) August, 2013 - \$6,868.44; f) September, 2013 - \$6,868.44; and g) October, 2013 - \$6,868.44. See Exhibit L.
13. The FS gross income eligibility limit for a FS group of 3 was \$3,182 for the period of March, 2013 through September, 2013, and then the income limit for 3 increased to \$3,256 as of October, 2013. See Exhibit L.

14. The petitioner's household's gross income was above the FS income eligibility for the entire FS overpayment period of March, 2013 through June, 2013, and August, 2013 through October, 2013. See Exhibit L.
15. The county agency sent May 6, 2013 FoodShare Overpayment notices to petitioner and [REDACTED] [REDACTED] stating that petitioner received a FS overpayment of \$3,384.00 during the period of March 1, 2013 to October 31, 2013, due to failure to report earned income due to client error. That notice indicated that due to joint and several liability both Mr. [REDACTED] and Ms. [REDACTED] were liable for the FS overpayment. Exhibit C.
16. The county agency sent a "corrected" FS overpayment notice and worksheet to the petitioner explaining in detail the reduction of petitioner's FS overpayment from \$3,384 to \$2,858. Exhibit L.
17. The county agency correctly calculated the petitioner's reduced FS overpayment of \$2,858 based upon the following FS benefits issued to petitioner: a) March, 2013 - \$495; b) April, 2013 - \$495; c) May, 2013 - \$145.60; d) June, 2013 - \$145; e) August, 2013 - \$526; f) September, 2013 - \$526; and g) October, 2013 - \$526. See Exhibit L.
18. During the July 16, 2014 hearing, both petitioners stipulated that after hearing the county agency's case they were no longer disputing the FS overpayment from July 28, 2013 through October 31, 2013, but both petitioners continued to dispute their FS overpayment from March 1, 2013 to July 28, 2013.

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(c). 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(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

All FS applicants and recipients have a duty to accurately and truthfully report income to the county agency. 7 C.F.R. §273.12, "Reporting requirements." Furthermore, a FS recipient has the duty to cooperate in provide accurate and true income information on both his/her FS application and during later reviews. The FS recipient is also required to cooperate with the county agency in verifying all household income in order for the county agency to accurately determine a FS application or recipient's FS eligibility and benefits. 7 C.F.R. §273.2(d), "Household cooperation."

As explained in the above Findings of Fact, petitioner and [REDACTED] [REDACTED] failed to timely and fully report their income to the county agency during the overpayment period. To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

A FS household is required to report an increase in income within 10 days if the increase causes income to go above 130% of poverty. Handbook, App. 8.1.1.1. In this case, the petitioner failed to report an increase in income when the household exceeded 130% FPL reporting threshold of \$2,069 in January, 2013 and again in June, 2013. Furthermore, on June 24, 2013, petitioner began employment at [REDACTED] and he failed to report that income to the county agency. The petitioner was required to report that new job at [REDACTED] by July 10, 2013, but failed to do so. See Finding of Fact #11 above.

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). The controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: "The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . ." 7 C.F.R. § 273.18(a); see also FoodShare Wisconsin Handbook, Appendix 22.2.1. In addition, 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 . . .

Therefore, the county agency is correctly seeking recovery of the FS overpayment not only from [REDACTED] but also from his fiancé, [REDACTED] [REDACTED], based upon joint and several liability for the household's FS overpayment.

During the July 16, 2014 hearing and in its August 23, 2014 closing argument, the county agency representative, Monica Johnson presented convincing testimony and evidence that the petitioner and [REDACTED] failed to report all the their earned income from their employers to the county agency. While the record was held open, county overpayment specialist Monica Johnson provided a detailed closing argument with convincing exhibits to establish that the county agency was correctly pursuing the reduced FS overpayment of \$2,858 against petitioner and Ms. [REDACTED].

During October, 2013, the county agency received SWICA State wage matches for the petitioner and Ms. [REDACTED]. The State wage match for petitioner for the first and second quarter of 2013 confirmed the under-reporting by petitioner and his failure to report his new job at [REDACTED]. Exhibits B The State wage match for [REDACTED] [REDACTED] for the first, second, and third quarters confirmed Ms. [REDACTED] only reporting about half of her actual earned income. Exhibit B. As a result, the full earned income of petitioner and Ms. [REDACTED] was not budgeted as income to the FS household in determining the petitioner's FS household eligibility and benefits. The county agency established that petitioner's gross household income was above the gross income limit for the entire FS overpayment period except March, 2013 through October, 2013. The petitioner did not contest that he had received FS benefits during the period of entire FS overpayment period. Furthermore, petitioner did not offer any evidence to refute the accuracy of the county's FS overpayment calculation of \$2,858 for that overpayment period.

This Administrative Law Judge (ALJ) wanted to provide every opportunity for both the county agency and the petitioner to provide clear, reliable documentation regarding the petitioners' failure to report household income, and the accurate amount of the petitioner's household income during the overpayment period in question. Thus, the record was held open for the submission of the county agency's closing argument with attachments, and then for the petitioner to submit a responsive closing argument with possible attachments as to why the alleged FS overpayment was inaccurate or incorrect.

Ms. [REDACTED] sent an August 13, 2014 closing argument to DHA which basically argued the overpayment was not her fault because the notices and other documents had been sent to petitioner, as the FS case head. She argued that she was unaware of the reporting requirements or what the petitioner had reported as her income to the county agency. However, such argument must fail, due to her joint and several liability (which is fully explained above). As a result, all

adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. Therefore, the county agency is correctly seeking recovery of the FS overpayment not only from [REDACTED] [REDACTED], but also from his fiancé, [REDACTED] [REDACTED], based upon joint and several liability for the household's FS overpayment.

In his August 13, 2014 closing argument and attachments, Mr. [REDACTED] provided various unconvincing excuses and allegations for why the overpayment was not his fault or was incorrect. He also attempted to refute the county agency's case but was unpersuasive, especially given the agency's reliable, well-documented overpayment case against him. See above Findings of Fact. He was unable to provide any reliable evidence to refute the evidence established by the county agency regarding the FS overpayment during the period in question.

The petitioner and Ms. [REDACTED] basically argued that it was unfair that the county agency was seeking recovery of the overpayment. However, nor petitioner nor Ms. [REDACTED] were unable to provide any reliable evidence to refute the county agency's substantial overpayment case, as documented in the above Findings of Fact. In any case, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: **"The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . ."** 7 C.F.R. §273.18(a); see also FoodShare Wisconsin Handbook, Appendices 7.3.1.9 and 7.3.1.1. Accordingly, I conclude that the county agency is correctly seeking recovery of a reduced FoodShare (FS) overpayment of \$2,858 during the total period of March 1, 2013 to October 31, 2013, due to under-reporting of earned income for the petitioner (FS casehead) and [REDACTED] [REDACTED] resulting in gross household income above the FS gross income eligibility limit for the entire overpayment period and joint and several liability for that overpayment.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a reduced FoodShare (FS) overpayment of \$2,858 during the total period of March 1, 2013 to October 31, 2013, due to under-reporting of earned income for the petitioner (FS casehead) and [REDACTED] [REDACTED] resulting in gross household income above the FS gross income eligibility limit for the entire overpayment period and joint and several liability for that overpayment.

THEREFORE, it is

ORDERED

The petition for review herein be and the same 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 1st day of October, 2014

\sGary M. Wolkstein
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 October 1, 2014.

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