



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/158435

PRELIMINARY RECITALS

Pursuant to a petition filed June 20, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on July 15, 2014, by telephone.

The issue for determination is whether petitioner was overpaid FS for failing to report a new job.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Simone Johnson
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In 2012 petitioner received FS as a single person household with no income. In January, 2013, either he or someone claiming to be him completed a telephone review for continued FS. No income was reported.
3. Petitioner started working as a truck driver in late 2012. The agency discovered the employment late in 2013 via a state wage match.

4. The agency determined that petitioner was overpaid FS beginning February 1, 2013 due to failing to report his income. In the meantime the agency discovered that petitioner married another FS recipient in May, 2013. The two of them had been receiving FS at the same address during the entire time.
5. By a notice dated June 18, 2014, the agency informed petitioner that he was overpaid \$548 in FS from February 1 through May 31, 2013 because he did not report his income, claim no. [REDACTED]. At the same time the agency notified petitioner and his wife that they were overpaid \$4,973 in FS beginning June 1, 2013 through January 31, 2014 because they failed to report the marriage and because petitioner's income was not budgeted, claim no. [REDACTED].
6. Petitioner's wife has an appeal pending on claim no. [REDACTED].

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.

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).

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). Obviously income from employment must be budgeted.

Petitioner testified that after he obtained the trucking job he no longer used FS and thought the case was closed. The testimony is belied by the fact that someone continued to do FS reviews and continued to have contact with the agency. Not only was a telephone review completed on January 17, 2013, a change was reported on May 23, 2013 (saying that he no longer had a telephone), and an inquiry concerning a six-month report form was made on June 27, 2013 at which time a renewal was completed and FS reopened.

Even if I assume that petitioner was being truthful in testifying that he had nothing to do with the FS program after he obtained his job, I nevertheless find him to be liable for the overpayment. In order for another person to take over petitioner's FS case, petitioner had to give that person his identification information and the FS debit card. A person could not simply take over petitioner's case without that information, and there is no record that petitioner's FS card was reported lost and replaced in late 2012 or early 2013. The case remained open at the address on 39th Street that petitioner used in 2012 and which, not coincidentally, was the same address of the woman that petitioner married in May, 2013. Therefore, even if I give petitioner the benefit of the doubt that he did not use the FS in 2013, he still is responsible for the FS being issued illegally to another person on his behalf.

This decision covers only the FS issued because petitioner failed to report his job. Petitioner testified that although he was married on May 6, 2013, the marriage collapsed after only a few weeks and he moved out. Nevertheless, petitioner married another FS recipient and their FS cases should have been combined. Even if the judge in petitioner's wife's appeal concludes that they separated, petitioner still was overpaid FS on his own case because he had income from his trucking job. I cannot excuse petitioner for the second, larger FS overpayment because neither the marriage nor the breakup were reported, and the primary basis for that overpayment was the failure to budget petitioner's income. If the judge in the companion case rules that the

overpayment be reduced due to the breakup of the unreported marriage, the amount owed by petitioner might be reduced.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overpaid FS in 2013 and 2014 because he failed to report his employment.

THEREFORE, it is ORDERED

That 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 23rd day of July, 2014

\sBrian C. Schneider
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 23, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability