



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158469

PRELIMINARY RECITALS

Pursuant to a petition filed June 19, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 07, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined that the Petitioner was over-issued Foodshare benefits.

NOTE: On the date of the hearing Petitioner expressed concerns that her son, JJ was being held liable for part of the alleged overpayment. Petitioner was advised at that time that her son needed to file his own appeal. An unsuccessful attempt was made to contact JJ on the date of the hearing to see if he wanted to assert his appeal rights and have his mother represent him. A voice mail message was left informing JJ that he could either call the Division of Hearings and Appeals or send in a letter to file an appeal.

On August 11, 2014, the Division of Hearings and Appeals received an e-mail from Petitioner's e-mail address, that indicated it was from JJ and that he wanted to appeal. ALJ Ishii responded that same day with an e-mail to [redacted] explaining that the request for a hearing must come in under JJ's own name and that he could call the Division of Hearings and Appeals to file his appeal.

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: Pamela Hazley, HSPC, Sr.
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
 Mayumi M. Ishii
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 12, 2014, someone called DHS's fraud tip line to report the Petitioner was married and living with her husband since 2005. (Exhibit R52)
3. On June 2, 2014, Milwaukee Enrollment Services sent the Petitioner six FoodShare Overpayment Notices:
 - Claim [REDACTED] for \$8,039.00 for the period of July 1, 2008 to June 30, 2008
 - Claim [REDACTED] for \$8,507.00 for the period of July 1, 2009 to June 30, 2010
 - Claim [REDACTED] for \$9,518.00 for the period of July 1, 2010 to June 30, 2011
 - Claim [REDACTED] for \$9,303.00 for the period of July 1, 2011 to June 30, 2012
 - Claim [REDACTED] for \$8,384.00 for the period of July 1, 2012 to June 30, 2013
 - Claim [REDACTED] for \$9,002.00 for the period of July 1, 2013 to June 30, 2014

(Exhibits R1, R3, R5, R7, R10 and R13)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 17, 2014. (Exhibit P1)
5. During the times in question, Petitioner lived at the address indicated above, under Parties of Interest. (Testimony of Petitioner)
6. The Petitioner is the sole owner of that property and has been so since November 2003. (Testimony of Petitioner; Exhibit R59)
7. Petitioner and her husband, [REDACTED], were married on June 25, 2005. (Testimony of Petitioner; Exhibit R62)
8. Two years into the marriage, Petitioner and her husband had marital difficulties stemming from his infidelity. (Testimony of Petitioner; Exhibits P2, P5 and P6)
9. [REDACTED] moved out of Petitioner's residence, but continued to use her address as a mailing address. (Id.)
10. [REDACTED] signed a rental lease agreement for an apartment on February 1, 2011, with [REDACTED] as his roommate. (Exhibit P7)
11. [REDACTED] then moved in with [REDACTED]'s sister, when [REDACTED] secured low income housing sometime around March 2013. (Exhibit P6)
12. [REDACTED] returned to Petitioner's home around March 2014. (Testimony of Petitioner; Exhibit R52)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), emphasis added; see also *FoodShare Wisconsin Handbook (FSH)*, App. § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

However, if the overpayment was caused by household/client error, the state agency may look back six years from the date of discovery to recoup an overpayment. Id.

Further, “all adult or emancipated minor food unit members at the time of the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household...The following are responsible for paying a claim...Each person who was an adult member of the household when the overpayment or trafficking occurred...” *FSH §7.3.1.2; see also 7 CFR §273.11(a)(4)(i)*

The Federal FoodShare regulations define FoodShare household composition as follows:

General household definition. (a) A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a) See in accord, FS Wisconsin Handbook, §§3.3.1.1; 3.3.1.2 and 3.3.1.3.

The federal definition of a household is what Wisconsin refers to as a food unit. *FS Wisconsin Handbook, §§3.3.1.1.* Spouses who live together are considered part of the same food unit, regardless of whether they purchase and prepare food together. *FS Wisconsin Handbook, §§3.3.1.2* Thus, if the Petitioner and her husband were living together during the time in question, they would have to be considered part of the same household/food unit and both of their incomes would need to be considered in making any FoodShare eligibility determinations.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency’s case and establish facts sufficient to overcome the county agency’s evidence of correct action.

In the case at hand, the agency asserts that the Petitioner and ■ were living together between June 2007 and July 2014 and as such, ■’s income needed to be counted when determining Petitioner’s eligibility for FoodShare benefits, but Petitioner didn’t report ■ in the home, so an overpayment occurred.

Petitioner did not dispute that she received FoodShare benefits in the amounts stated in aforementioned claims. Petitioner did not dispute the fact that ■ and she were married in 2005 and never divorced. Petitioner also admits that she did not report her husband as being part of her household during the time in question. However, Petitioner asserts that her husband was not living with her between June 2008 and March 2014.

Petitioner indicated that ■ and she separated sometime in September 2007 because ■ was cheating on her and she asked him to leave the residence. The Petitioner testified that ■ and she stayed on good terms because he had built a strong relationship with her children and that they have previously, but unsuccessfully, attempted to reconcile in the past.

According to Petitioner's testimony and ■■■'s written statements, ■■■ lived with his grandmother until she passed away in 2009, and then stayed with various friends. Both Petitioner and ■■■ assert that in 2011, ■■■ signed a lease for an apartment, then later moved in with his roommate's sister and paid rent to her.

The Period of July 2008 to February 2011

As discussed above, it is undisputed that Petitioner and ■■■ have been married since 2005 and it is undisputed that ■■■ reported the Petitioner's address as his address during the time in question. The agency points out that it has submitted a My Vote Wisconsin print out showing that when ■■■ registered to vote in 2004, he did so listing the Petitioner's address as his residence and that he subsequently voted from that address in November 2008 and November 2010. (Exhibit R104)

This is an extremely close case and the agency was correct to question Petitioner and ■■■'s living arrangement. However, in the absence of other documentation showing that ■■■ was living with the Petitioner, this evidence is not enough for the agency to meet its burden to prove, by a preponderance of the credible evidence that Petitioner and ■■■ were living together. Indeed, there is no evidence that ■■■ made payments towards the mortgage, property taxes, utilities or repairs on the home between July 2008 to February 2011. There is no documentation showing that Petitioner and ■■■ filed joint income taxes or claimed each other as dependents on their W-4s. There is no indication in the record that ■■■ kept any significant property at Petitioner's home between July 2008 and February 2011. Further, there is no indication that there were any children born to ■■■ and the Petitioner before or since their marriage in 2005. In addition, it is undisputed that the Petitioner is the sole owner of the home and has been so since before the marriage.

Based upon the foregoing, it is found that the agency has not met its burden to show that ■■■ and the Petitioner were living together between July 2008 and February 2011.

The Period of February 2011 through January 2014

The next seven exhibits bore dates from between July 2011 and January 2014:

1. A police report dated July 15, 2011, listing ■■■'s address as Petitioner's address. (Exhibit R99)
2. A recall petition signed by ■■■ on November 24, 2011, listing his address as being the same as Petitioner's address. (Exhibit R98)
3. A CCAP print out showing that someone reported ■■■'s address as being the same as Petitioner's address, as of May 20, 2013. (Exhibit R97)
4. A report from the Wisconsin Department of Transportation (DOT) indicating that ■■■ applied for a vehicle title for a 2011 Honda on November 18, 2013 and listed his address as the Petitioner's address. (Exhibit R103)
5. A KIDS print out showing that ■■■ updated his address on 12/4/13 to Petitioner's address. (Exhibit R100)
6. A New Hire Information Print out showing that MPS listed ■■■'s address as Petitioner's as of December 4, 2013. (Exhibit R101)
7. A CCAP printout showing that someone reported ■■■'s address as Petitioner's address on January 27, 2014. (Exhibit R102)

This again is a close call. The foregoing documentation again shows what Petitioner does not dispute, that ■■■ used her address. He clearly did so, a lot. Given that Petitioner and ■■■ were married, the agency's decision to question their living arrangement is understandable. Indeed, the police report (Exhibit R99) is particularly troubling, because it indicates the Petitioner and ■■■ were in the same

bedroom at about midnight when someone fired a gun at her residence on July 15, 2011. However, the Petitioner has offered sufficient evidence to rebut the agency's claim that ■ was living with her between February 2011 and March 2014.

First, Petitioner testified that she asked ■ to spend the night because her son, TE had been having trouble with another man and she was concerned for his safety and her own. This is also supported by that same police report, Exhibit R99.

Second, Petitioner offered testimony that ■ and she were estranged during this time and no longer living together. Petitioner's testimony is corroborated by the fact that the home is deeded solely in her name (Exhibit R59), by a lease signed by ■ in February 2011 for another residence (Exhibit P7) and a notarized statement from ■'s subsequent landlord. (Exhibit P6)

Third, as noted above, there is no evidence that ■ made payments towards the mortgage, property taxes, utilities or repairs on the home during the time in question. There is no documentation showing that Petitioner and ■ filed joint income taxes or claimed each other as dependents on their W-4s. There is no indication in the record that ■ kept any significant property at Petitioner's home between July 2008 and February 2011. Further, there is no indication that there were any children born to ■ and the Petitioner before or since their marriage in 2005.

Based upon all of the foregoing, there is insufficient evidence to prove ■ was living with Petitioner between February 2011 to March 2014.

March 2014 through July 2014

Petitioner testified that ■ moved back into her residence sometime around March 2014, which was two months after Petitioner completed her renewal on January 23, 2014. (Exhibit R89) There is no indication in the record and no assertion that all members of Petitioner's household were either elderly, blind or disabled. As such, Petitioner was subject to reduced reporting requirements:

6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)

All other food units [i.e., household's which do not have an EBD member] are only required to report if their total monthly gross income exceeds 130% (8.1.1) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

...

FSH, §6.1.1.2.

This follows Federal law which directs that States may:

“...require households with income that are assigned 6-month or longer certification periods to report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline.” 7 C.F.R. § 273.12(a)(vii); (emphasis added.)

130% FPL for Petitioner's reported household size of 6 was/is \$3,423. *FSH §8.1.1.* Thus, per *FSH §6.1.1.2*, Petitioner would only have had to reported ■ in her home if his added income put her over the \$3,423 130% FPL income limit.

Exhibit R117 is a Work Number print out showing ■■■'s earnings from his job with the City of Milwaukee. According to that exhibit, ■■■ received a paycheck on March 13, 2014, with gross earnings of \$2,045.71 and he received a paycheck on March 27, 2014 with gross earnings of \$1,706.78. In addition the State Wage Record, indicates that ■■■ earned \$2962.96 from Milwaukee Public Schools, during the first quarter of 2014, which would work out to be an average of \$987.65 per month. (Exhibit R113)

■■■'s total earned income for March 2014 was $\$2,045.71 + \$1,706.78 + \$987.65 = \4740.14

According to the State Wage Record, SH's first quarter earnings for 2014 totaled \$998.00, which would work out to be an average of \$332.66 per month. (Exhibit R118)

Totaling ■■■'s earned income with SH's earned income we have $\$4740.14 + 332.66 = \$5,072.80$.

This, alone, is over the 130% FPL income limit of \$3,423.13. As such, Petitioner needed to report ■■■'s income by April 10, 2014, which would have affected her benefits beginning May 2014. *See FSH, §7.3.2.1. (It should be noted that Petitioner's household also had unearned income that was not included in the above calculation, but would have put Petitioner farther above the 130%FPL income limit.)*

Thus, the agency correctly established an overpayment for the months of May and June 2014.

CONCLUSIONS OF LAW

1. The agency did not meet its burden to prove the Petitioner was overpaid FoodShare benefits for the months of July 1, 2008 through April 30, 2014.
2. The agency correctly established an overpayment for the months of May and June 2014.

THEREFORE, it is

ORDERED

That the agency **rescind** the following claim numbers:

Claim ■■■■■ for \$8,039.00 for the period of July 1, 2008 to June 30, 2008

Claim ■■■■■ for \$8,507.00 for the period of July 1, 2009 to June 30, 2010

Claim ■■■■■ for \$9,518.00 for the period of July 1, 2010 to June 30, 2011

Claim ■■■■■ for \$9,303.00 for the period of July 1, 2011 to June 30, 2012

Claim ■■■■■ for \$8,384.00 for the period of July 1, 2012 to June 30, 2013

The agency shall **amend** claim number ■■■■■ to reflect an overpayment for May and June 2014, only.

The agency shall take all administrative steps necessary to complete these tasks within 10-days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 29th day of August, 2014.

\sMayumi M. Ishii
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 29, 2014.

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