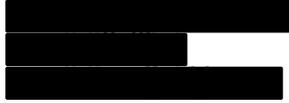




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158697

PRELIMINARY RECITALS

Pursuant to a petition filed June 27, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Manitowoc County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on July 22, 2014, at Manitowoc, Wisconsin.

The issue for determination is whether Petitioners, [redacted] and [redacted], are jointly and severally responsible for a FoodShare benefits (FS) overpayment of \$702.00 from December 2013 and January 2014 when their benefits were continued pending a decision from the Division of Hearings and Appeals.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By: Sheryl McNamara
Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioners (CARES # [redacted]) are residents of Manitowoc County.

2. On December 13, 2013 Petitioners requested Fair Hearings in case numbers 154045 and 154016. They requested that their benefits continue pending appeal. The Division of Hearings and Appeals held a fair hearing in both cases on January 21, 2014. On January 31, 2014 the ALJ issued decisions dismissing those petitions.
3. Petitioners received a total of \$702 in FS benefits for December 2013 and January 2014 while their appeal was pending.
4. On January 31, 2014 the agency sent a referral to O'Brien and Associates to process the FS overpayment of \$702 for December 2013 and January 2014. O'Brien and Associates processed the overpayment, and notices of overissuance and repayment agreements were generated by the CARES system.
5. On May 1, 2014 the agency sent a Notification of FS Overissuance to Petitioners stating that they were overissued \$702 in FS benefits for claim number [REDACTED] from October 1, 2013 through November 30, 2013. The dates on this notice are a clerical. The dates for the \$702 overpayment are December 2013 and January 2014.
6. On July 1, 2014 the Division of Hearings and Appeals received a request for fair hearing from Petitioner. Petitioner stated that she understood she had to repay the overpayment, but did not believe that her husband should have to repay this overpayment because he is not a US citizen and has not been a permanent resident to receive benefits.

DISCUSSION

In this case Petitioner does not dispute that she owes \$702 for a FS overpayment. Petitioner acknowledged that her benefits were continued for December 2013 and January 2014 pending a decision from Division of Hearings and Appeals in a different appeal. The ALJ dismissed that appeal, which created an overpayment of \$702. She is on a voluntary payment plan of \$20 per month to repay the \$702 overpayment. Petitioner's only complaint was that her husband was also responsible for the \$702 overpayment.

The law provides that each person who was an adult member of the FS household when an overpayment occurred is responsible for paying the claim. *7 C.F.R. § 273.18(a)(4)(i) (2007)*; See also, *FoodShare Wisconsin Handbook 7.3.1.2*. All FS overpayments, regardless of fault, must be collected. *7 C.F.R. § 273.18(a)(2) (2007)*; See also, *FoodShare Wisconsin Handbook 7.3.1.1*. The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid. *Id.* A Notification of FoodShare Overissuance must be issued. *FoodShare Eligibility Handbook, §7.3.1.8*. Adults household members are jointly and individually liable for the overpayment, by law. *7 C.F.R. § 273.18(a)*; *7 U.S.C. 2022(a)(2)*; *FoodShare Wisconsin Handbook, App. 7.3.2*.

Because the husband was a member of the household, the husband is also responsible for the \$702 overpayment. The agency can only collect a total of \$702 from both Petitioner and her husband, but both are responsible.

The remaining issue for this case is whether the notices of FS overissuance and repayment agreements are defective. The date of the overpayment based upon the records provided and the testimony is December 2013 and January 2014. The date of overpayment listed on the notices is October and November 2013.

The agency had to manually issue FS benefits in December 2013 and January 2014 while Petitioner's previous appeal was pending. When the ALJ issued the decision dismissing the appeal the agency sent a referral to O'Brien and Associates to process the \$702 FS overpayment for those two months that benefits had been manually entered pending the appeal. Presumably, this overpayment also had to be manually

processed. I further note that the amount of overpayment alleged by the agency and contained in the notices is identical, \$702. In addition the overpayment is from a two month time period.

In this unique case both the agency and Petitioner agree that there is one \$702 overpayment. Upon receiving the overpayment notice in May 2014 Petitioner called the Department two times in May 2014 and three times in June 2014. The agency and Petitioner discussed the overpayment during those phone calls. Petitioner did not dispute the overpayment or the dates of the overpayment. All the parties seem to understand that this \$702 overpayment is from December 2013 and January 2014. For these reasons I conclude that the date of overpayment listed on the notices is a clerical error caused when O'Brien and Associates manually processed the overpayment after Petitioners previous appeal.

I further conclude that the agency's clerical error did not prejudice Petitioner. Petitioner never objected to the notice. Petitioner's only complaint on appeal was that her husband, a member of her household, was also responsible for the FS overpayment. Petitioner was able to have a hearing on that issue, and I have issued my decision on that issue. As a practical matter it would be more onerous to Petitioner not to accept the notices because it would force Petitioner to repeat this same appeal process for something that is not her fault and that she did not object to. In this unique situation that would be putting form over substance. I still urge the department to correct this error in their system so future notices are correct.

CONCLUSIONS OF LAW

Petitioners are jointly and severally responsible for a FoodShare benefits (FS) overpayment of \$702.00 from December 2013 and January 2014 when their benefits were continued pending a decision from the Division of Hearings and Appeals.

THEREFORE, it is

ORDERED

That the petition is dismissed.

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 28th day of July, 2014

\sCorinne Balter
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 28, 2014.

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