



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

In the Matter of

[REDACTED], # [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/158771

PRELIMINARY RECITALS

Pursuant to a petition filed June 30, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Marinette County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on October 06, 2014, at Fond Du Lac, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of food stamps due to agency error.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED], # [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

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

By: Sandra Waugus

Marinette County Department of Human Services
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. Petitioner's children lived with petitioner's parents in Peshtigo, Wisconsin while petitioner was incarcerated from August 4, 2012-May 8, 2013. Petitioner resided there as well for a short time following her release.

3. At a June, 2013 intake interview, the petitioner informed the respondent that her parents received Kinship Care benefits while she was incarcerated, and were appointed guardianships for petitioner's children.
4. The respondent's employee did not research the status of said guardianships, and assumed that they ended upon petitioner's release from incarceration. At the time of the investigation in early 2014, it was discovered that the guardianships were still in effect.
5. The county agency notified the petitioner on April 16, 2014, that it was seeking to recover \$4,442.00 in food stamp benefits paid to her from June 3, 2013, through February 28, 2014, because petitioner's parents, the guardians of petitioner's children, should have been included as members of petitioner's FS household, and their income placed the household over the program's income limit.

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, § 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).

FS rules provide as follows:

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.

7 C.F.R. §273.1(b)(1); see also FS Handbook, § 3.3.1.3. Thus a guardian, exercising parental control, must be included in the FS household. Important for this case is that the issue is not the relationship between the grandparents and petitioner, but the relationship between grandparents/guardians and children.

Petitioner acknowledges that her parents are the guardians of her children. However, she denies liability for the overpayment based upon the respondent's concession that the overpayment arose from an agency error. She argues that she should not be responsible for an overpayment that was not her fault.

As noted previously, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FS Handbook, § 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. The respondent's investigation commenced in approximately January of 2014. The established overpayment period commenced in June, 2013, which is within the 12-month period preceding discovery. As such, the respondent has established the propriety of the overpayment. Petitioner did not dispute any specific calculation regarding the overpayment; I have reviewed those calculations and found no error.

CONCLUSIONS OF LAW

The respondent has established that petitioner was overpaid FS due to agency error in failing to properly determine petitioner's household composition.

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 17th day of October, 2014.

\sPeter McCombs
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 17, 2014.

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