



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/159494

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the [redacted] County Department of Social Services in regard to FoodShare benefits (FS), a telephonic hearing was held on August 26, 2014, at [redacted], Wisconsin. At the request of the parties, the record was held open for the county agency to submit its closing argument to the petitioner and the Division of Hearings and Appeals (DHA), and then for the petitioner's attorney to submit his response to DHA (and to the county agency). The parties timely submitted their closing arguments to DHA which are received into the hearing record.

The issue for determination is whether the county agency is correctly seeking recovery of FoodShare (FS) overpayments totaling \$8,686 to the petitioner during the total period of November 2, 2012 to May 31, 2014, due to petitioner's girlfriend's ([redacted]) failure to timely report to the county her accurate household composition ([redacted]) and Mr. [redacted]'s earned income which should have been included in her FS eligibility determinations resulting in household income above the FS net income eligibility limits during the entire overpayment period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Janece Swenson, ESS

[redacted] County Department of Social Services
811 Harding Street
[redacted] 54981-2087

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner, [REDACTED] [REDACTED], (CARES # [REDACTED]) is a resident of [REDACTED] County. His girlfriend, [REDACTED] [REDACTED], has two children (a son and a daughter). [REDACTED] and [REDACTED] have one child in common, a son MT.
2. [REDACTED] [REDACTED] was the casehead and received FoodShare (FS) benefits for a household of three during the entire period of November, 2012 through May, 2014 because she reported a household of three, and alleged she was eating and purchasing food separately from her parents.
3. [REDACTED] [REDACTED] participated in her reviews for FoodShare and Medical Assistance as a single parent with her two children, but did not report that she and her two children were residing in the home of [REDACTED] [REDACTED] located at [REDACTED] [REDACTED], [REDACTED], and thus were a FS group of four (and not three persons).
4. During her application interview process, her six month review forms (SMRFs) and during her annual reviews, petitioner maintained that she lived with her parents, [REDACTED] and [REDACTED] [REDACTED] at their home located at [REDACTED] [REDACTED], [REDACTED], [REDACTED]. Petitioner alleged in vague terms with no documentation that she moved out of her boyfriend's home ([REDACTED] [REDACTED]) during 2010, and did not move back into his home until she reported such alleged move on April 9, 2014.
5. On February 28, 2014, the county agency received a report stating that Ms. [REDACTED] had been living with Mr. [REDACTED] at his residence since at least October, 2012. The county agency began investigating whether petitioner and her children resided with [REDACTED] [REDACTED] and that his income had not been timely reported to the county agency.
6. The investigator from O'Brien and Associates after consulting with Mr. [REDACTED]'s neighbors, reviewing documents, and interviewing [REDACTED] [REDACTED] determined that [REDACTED] [REDACTED] and her children resided with petitioner based in part upon Ms. [REDACTED]'s statement that she "pretty much spends most nights at [REDACTED]'s." See Exhibit 7.
7. During the hearing, neither [REDACTED] nor [REDACTED] [REDACTED] testified on behalf of petitioner or their daughter ([REDACTED] [REDACTED]) regarding whether [REDACTED] and her children resided with them during the FS overpayment period in question.
8. During the hearing, neither petitioner nor [REDACTED] [REDACTED] were able to provide any reliable evidence to refute that she and her two children were residing at Mr. [REDACTED]'s home during the FS overpayment period.
9. The county agency established with reliable records ([REDACTED] County child support records, Wisconsin Department of Transportation records regarding Ms. [REDACTED]'s vehicle, school records for [REDACTED]'s son stating Mr. [REDACTED]'s address) that [REDACTED] [REDACTED] and her children resided with the petitioner during the period of November, 2012 through May, 2014. See Exhibits 19, 20 and 24.
10. During the hearing, [REDACTED] [REDACTED] basically admitted that she and her children spent most of their time at Mr. [REDACTED]'s residence with some time spent at her parents' home.
11. Petitioner and [REDACTED] [REDACTED] had the following net household income (earned and unearned income) during the FS overpayment period in question: a) November, 2012 - \$3,913.35; b) December, 2012 - \$3,913.35; c) January, 2013 - \$3,566.75; d) February, 2013 - \$3,566.75; e) March, 2013 - \$3,566.75; f) April, 2013 - \$3,541.52; g) May, 2013 - \$3,541.52; h) June, 2013 - \$3,541.52; i) July, 2013 - \$2,751.63; j) August, 2013 - \$2,751.63; k) September, 2013 -

\$2,751.63; l) October, 2013 - \$3,657.97; m) November, 2013 - \$3,657.97; n) December, 2013 - \$3,657.97; o) January, 2014 - \$3,302.35; p) February, 2014 - \$3,302.35; q) March, 2014 - \$3,302.35; r) April, 2014 - \$3,302.35; and s) May, 2014 - \$3,302.35.

12. [REDACTED] [REDACTED]'s earned income was not included in determining petitioner's FS eligibility and benefits for the entire FS overpayment period of November, 2012 through May 31, 2014 creating petitioner's FS overpayment.
13. On May 5, 2014 the county agency sent multiple written Notifications of FS Overissuances to petitioner informing [REDACTED] [REDACTED] that he was overissued a total of \$8,686.00 in FS benefits from November 2, 2012 through May 31, 2014, due to petitioner's and [REDACTED] [REDACTED]'s failure to report accurate household members ([REDACTED] [REDACTED] in the same household) and Mr. [REDACTED]'s earned income resulting in household income above the FS net income eligibility limits for the entire overpayment period. See Exhibits 9 – 16.
14. The FS net income eligibility limit for a household of four was \$1,921.00 for the period of November, 2012 through September, 2013, and that net income limit increased to \$1,963.00 for a household of four as of October, 2013 per FoodShare Wisconsin Handbook, 8.1.1, "Income limits."
15. The petitioner's FS household had total earned and unearned income for petitioner and [REDACTED] [REDACTED] which was above the FS net income eligibility limits for the entire FS overpayment period of November, 2012 through May, 2014.
16. Neither petitioner nor [REDACTED] [REDACTED] made any payments to the county agency to reduce their FS overpayment amount.

DISCUSSION

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).

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 . . .

7 CFR § 273.18. The FS Handbook similarly provides that an adult is a person who is 18 years old or older and a member of the food unit at the time the overpayment occurred is liable for repayment of any overissued FS benefits. FS Handbook § 7.3.1.2. All nonexempt income must be budgeted in determining FS. 7 C.F.R. § 273.9(b).

In this case, the county agency proved by the preponderance of the evidence that the basis for the overpayment was client error. The county agency correctly determined that [REDACTED] Theil was part of the petitioner's food unit since prior to November, 2012, and that his income had not been used to determine her FS eligibility and benefits which, in turn, gave rise to the FS overpayments during the period of November, 2012 through May, 2014. As a result, [REDACTED] Theil and [REDACTED] [REDACTED] were **jointly and severally liable for this FS overpayment.** The county representative indicated that petitioner and Ms. [REDACTED] were incorrectly awarded \$8,686 in FS benefits because the total accurate income of petitioner and Ms. [REDACTED] would have either placed the household over the FS net income limit during petitioner's FS overpayment period.

During the August 26, 2014 hearing, [REDACTED] Theil and [REDACTED] [REDACTED] did appear but their testimony was unconvincing to refute that Ms. [REDACTED] and her children resided with the petitioner in his home during the full FS overpayment period. The petitioner testified in vague terms that she and her children resided with her parents during some uncertain periods during the overpayment period. [REDACTED] [REDACTED]'s testimony was self-serving but not credible. The petitioner was unable to provide any reliable evidence to refute the county's case, or to indicate any error in the calculation of her FS overpayment. Neither petitioner nor Ms. [REDACTED] were able to provide any evidence to refute the documents which indicated that she resided with her children at Mr. [REDACTED]'s home during the overpayment period. Furthermore, Ms. [REDACTED]'s parents did not testify for the petitioner (or provide any sworn statement) to establish that their daughter resided with them during the overpayment period. Such omission undetermined petitioner's case.

In his closing argument, Attorney [REDACTED] attempted to argue that while [REDACTED] did spend "considerable time" at Mr. [REDACTED]'s home petitioner and her children did not actually reside with him. However, such general allegations were not supported by any reliable evidence or documentation. On the other hand, the county agency did provide reliable evidence as indicated in Finding of Fact #9 above. Furthermore, the county agency's closing argument contained reliable evidence which supported its overpayment case.

Overall, the petitioner presented a weak, unpersuasive case. During the August 26, 2014 hearing, petitioner was unable to present any non-hearsay reliable evidence to refute or undermine the county's testimony or evidence that [REDACTED] and her children resided with the petitioner (with their child in common), and they failed to report his income during the entire FS overpayment period. Therefore, Mr. [REDACTED]'s earned income must be budgeted as income in determining petitioner's FS eligibility. The petitioner was unable to specify any error in the county agency's calculation of the petitioner's FS overpayment amount of \$8,686.00

The petitioner did not contest that his FS household had received FS benefits during the period of November, 2012 through May, 2014. Furthermore, the petitioner was unable to offer any reliable evidence to refute that the county agency was correctly and accurately pursuing FS overpayments against him and [REDACTED] [REDACTED]. Nevertheless, petitioner contended that it was unfair that the county agency was seeking to recover the FS overpayment. However, joint and several liability requires such action against the petitioner even though [REDACTED] [REDACTED] was the FS casehead. 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 for the above reasons, I must conclude that petitioner in a FS household which was overissued a total of \$8,686 in FS benefits during the total period of November, 2012 through May, 2014 due to [REDACTED] [REDACTED] and petitioner's failure to timely report to the county agency her accurate household composition and Mr. [REDACTED]'s earned income which should have been included in her FS eligibility and benefit determinations.

CONCLUSIONS OF LAW

1. The county agency is correctly seeking recovery of FoodShare (FS) overpayments totaling \$8,686 to the petitioner during the total period of November 2, 2012 to May 31, 2014, due to petitioner's girlfriend's ([REDACTED] [REDACTED]) failure to timely report to the county her accurate household composition ([REDACTED] [REDACTED]) and Mr. [REDACTED]'s earned income which should have been included in her FS eligibility determinations resulting in household income above the FS net income eligibility limits during the entire overpayment period.

2. [REDACTED] is jointly and severally liable for the petitioner's FS overpayment as stated in Conclusion of Law #1 above, pursuant to 7 CFR § 273.18.

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 10th 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 10, 2014.

██████████ County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney ██████████ ██████████