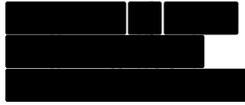




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/159495

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Ashland County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on August 21, 2014, at Ashland, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of FoodShare.

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: Beulah Garcia

Ashland County Department of Human Services
630 Sanborn Avenue
Ashland, WI 54806

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of Ashland County.
2. On July 10, 2014, the county agency sent the petitioner three separate notices indicating that it seeks to recover a total of \$11,637 in FoodShare provided to her household from October 1, 2011, through May 31, 2014, because it contends that her mother was part of her household and did not verify her income.

3. The petitioner is now 31 years old.
4. On June 12, 2014, the county agency requested that the petitioner verify her mother's income by June 23, 2014. The petitioner did not verify that income.
5. The petitioner and her mother have lived together since September 15, 2012, but purchased and prepared food separately.
6. The petitioner did not pay rent or utilities after June 30, 2012.
7. The petitioner's husband moved out of her house on June 23, 2012. At that time, he was earning \$1,368.97 per month. The petitioner reported this at her review in October 2012, and the agency stopped including his income when determining her benefits in November 2012.
8. Except for in May 2014, the petitioner's only income throughout the relevant period was child support. She received \$280.40 from November 2012 through May 2013, 248.26 from June 2013 through October 2013, and \$182.86 from November 2013 through May 2014. In May 2014, the petitioner received \$25 in earned income.

DISCUSSION

Federal rules require state agencies to "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. FoodShare eligibility depends upon the number of persons and total income of a household. A FoodShare household consists of all persons who purchase and prepare food together. If a person lives with others but purchases and prepares food separately, she can be considered part of a separate FoodShare household. 7 CFR § 273.1(a). The amount of benefits a household receives depends upon the number of persons in the household and the household's total countable net income. The county agency seeks to recover \$11,637 in FoodShare provided to the petitioner from October 1, 2011, through May 31, 2014, because it contends that her mother was part of her FoodShare household. This is the total amount that the petitioner received in that period. The agency requested that the petitioner's mother verify her income. When she did not do so, the agency could not determine what it considered to be the total household income and as a result the petitioner was not entitled to any benefits during this period.

The terminology used to describe those who purchase and prepare food together is confusing because Wisconsin policy uses different terms than the federal regulations. The federal regulations state refer to all those who purchase and prepare food together as a "household." 7 CFR § 273.1(a). Wisconsin's policy states, "Households consist of all persons living in or temporarily absent from the same residence." *FoodShare Wisconsin Handbook*, § 3.3.1.1. Those who purchase and prepare food together are referred to as a "food unit." *Id.* I will use the state terminology for the rest of this decision to avoid confusion over the fact that both parties agree that the petitioner and her mother live in the same residence.

The agency's argument that the petitioner's mother must verify her income is correct only if her mother was considered part of her food unit. This is because the *FoodShare Wisconsin Handbook*, § 1.2.1.1, instructs workers to "[o]nly verify those items required to determine eligibility and benefits for the programs for which you are testing eligibility." If the petitioner's mother is not part of her food unit, then her income is irrelevant. The petitioner is now 31 years old, which means that she has been over 22 years old throughout the period in question. She and her child lived with her husband, who is the child's father, but he moved out in 2012. The petitioner's rent is \$525 per month, plus utilities. Other than \$25 in earned income in May 2014, her only income since her husband moved out has been monthly child support that according agency documents has varied somewhat but has never exceeded \$300. Because this was not enough for her to pay her bills, her mother began paying her rent and utilities. Presumably to save money, the petitioner's mother moved in with the petitioner and the petitioner's child. The petitioner's mother testified that she told the petitioner that she would pay for the household's rent and utilities but would

only pay for her own food. As a result, they contend that they purchase and prepare food separately, making them separate food units.

I am always skeptical when relatives who move in together to save money contend that they are not purchasing and preparing food together. Nevertheless, unless someone sees them eating or shopping together or finds grocery receipts, it is difficult to disprove such a contention. It was somewhat difficult to keep the petitioner and her mother focused on the issues at the hearing, but this was primarily because both wished to testify about the difficulty of living on the financial margins after the petitioner's husband walked out on her. This is understandable. Neither was evasive or made any obviously false statements at the hearing. On the other hand, the petitioner was required to report when her mother moved in. Not doing so is consistent with attempting to cover up the actual situation. If she had reported that her mother was in the house, she could have prepared a document indicating that they were purchasing and preparing food separately. Although neither party submitted compelling evidence, there is no evidence other than that based upon their general living situation that suggests that they are purchasing and preparing their food together. They both testified under oath that they purchase and prepare food separately. By doing so, they made a statement that is at least as persuasive as those made by persons who sign a statement indicating that they purchase and prepare food separately. This is so because in those circumstances the general living situation usually is also one that raises skepticism about the claim.

Although the petitioner and her mother did not purchase and prepare food together, the petitioner still received more FoodShare than she was entitled to. Net income, which as noted earlier provides the basis of the size of a FoodShare allotment, is determined after subtracting those deductions—and only those deductions—found in 7 CFR § 273.9(d) from gross income. When receiving her benefits, she claimed and got credit for a shelter deduction because she indicated that she paid \$525 plus utilities for her rent. As the evidence has made clear, her mother made these payments. The shelter deduction equals the amount that housing costs, including rent a standard utility allowance exceed 50% of the net income remaining after all other deductions are subtracted from gross income. *FoodShare Wisconsin Handbook*. §§ 4.6.7 and 8.1.3; 7 C.F.R. § 273.9(d)(6)(ii). If the petitioner's mother had been part of her food unit, it would not matter that she made these payments because the income and deductions of everyone in the household would be considered part of a single combined pot. But this decision has already determined that they are not part of the same food unit. Of course, if they had been, income the petitioner's mother received would also count, which would likely have led to a large reduction in her FoodShare allotment. Because the petitioner was not entitled to this deduction, her net income was understated, which means that she received a larger FoodShare allotment than she was entitled to.

The overpayment period mostly coincides with the period in which the petitioner did not pay for her rent and utilities. There is no direct, unassailable evidence that establishes the beginning of this period, but there is enough circumstantial evidence to make an informed determination. This evidence is based primarily upon when her husband moved out. She reported this to the agency when she renewed her benefits in October 2012. However, she indicated that he actually moved out on June 23, 2012. Because her income was less than her rent and utilities, it makes sense that she stopped paying those bills at that time. This is consistent with her and her mother's testimony. They claim that the petitioner's mother moved in on September 15, 2012. The petitioner's mother testified that her daughter's utilities had been cut off because she had not been paying them. She also testified that she began paying them before she actually moved in. All of this is consistent with her moving in a few months after the petitioner's husband moved out. The agency's investigator claimed that the petitioner's mother told him that she moved into the petitioner's house in September 2011. However, he did not record the statement or write it up for the petitioner or her mother to sign. Furthermore, the testimony persuasively indicated that the petitioner's mother and the petitioner's husband did not get along, so it is unlikely that the petitioner's mother would move in before her husband moved out. Finally, since both the petitioner's husband and her mother were employed, there was little financial reason to do so as long as the petitioner and her husband remained together.

Both the husband's moving out of the house and the petitioner's failure to pay her rent and utilities is a change of circumstances. Recipients must report changes of circumstances within 10 days. 7 CFR § 273.12(a)2. This means that the petitioner should have reported these things in July. Agencies must act on a change the month after the reported change is due. 7 CFR § 273.12(c)(2). This means that the agency would have acted on her report that she did not pay utilities in August 2012. However, at that time, the agency assumed that her husband lived with her. Because he was working and earning approximately \$1,300 per month, which is more than could be deducted for shelter deduction, if she had reported her entire change of circumstances in July 2012, her FoodShare allotment would have increased rather than decreased. This remains true through October 2012. When determining an overpayment, agencies are instructed to "[o]nly use the income and expenses reported or required to be reported for each month of the adjustment period." *FoodShare Wisconsin Handbook*, § 7.3.2.1. Because the income and expenses the petitioner was required to report would not have led to an overpayment until after October 2012, the first month that an overpayment could occur because she failed to report that mother was paying her rent and utilities was November 2012. This period continued through May 31, 2014.

Except for May 2014, the petitioner's income since November 2012 has been entirely child support. In May 2014, she also earned \$25. Her child support was \$280.40 from November 2012 through May 2013, \$248.26 from June 2013 through October 2013, and \$182.86 from November 2013 through May 2014. As mentioned earlier, a FoodShare allotment is based upon net income, which is determined by subtracting allowable deductions from gross income. Other than in May 2014, the only deduction the petitioner was entitled to was the standard deduction allowed for households with up to four persons. *FoodShare Wisconsin Handbook*, § 4.6.2 and 8.1.3; 7 CFR § 273.9(d)(1).. This deduction was \$149 from November 2012 through September 2013 and \$152 a month after then. The petitioner was also entitled to a \$5 earned income deduction in June 2014. This is equal to 20% of her \$25 in earned income that month. See 7 CFR § 273.9(d)(2). This means that her net income was \$131.40 from November 2012 through May 2013, \$99.26 from June 2013 through September 2013, \$96.26 in October 2013, \$30.86 from November 2013 through April 2014, and \$50.86 in May 2014. Because her FoodShare group had two persons, she was entitled to the following FoodShare allotments: \$327 from November 2012 through May 2013, \$337 from June through September 2013, \$338 in October 2013, \$358 from November 2013 through April 2014, and \$352 in May 2014. *FoodShare Wisconsin Handbook*, § 8.1.2. This totals \$6,475. The actual amount she received in this period was \$367 per month from November 2012 through October 2013 and \$347 from November 2013 through May 2014 for a total of \$6,833. Her overpayment is the difference between these two figures, or \$358. I will remand this to the county agency with instructions to reduce her overpayment this amount.

CONCLUSIONS OF LAW

1. The petitioner's mother has never been part of the petitioner's food unit because the petitioner is over 22 years old and they purchase and prepare food separately.
2. The petitioner failed to report that she did not pay rent or utilities after her husband moved out of her residence in June 2012.
3. The petitioner must repay the \$358 in FoodShare that she received but was not entitled to from October 1, 2011, through May 31, 2014.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take all steps necessary to reduce the petitioner's FoodShare overpayment for the period of October 1, 2011, through May 31, 2014, to \$358.

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 5th day of September, 2014

\sMichael D. O'Brien
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 September 5, 2014.

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