



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/159502

PRELIMINARY RECITALS

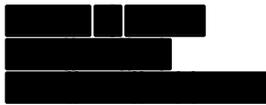
Pursuant to a petition filed August 01, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Grant County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on September 08, 2014, at Lancaster, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner's liability for an \$863 FS overissuance.

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: Jody Jackering

Grant County Department of Social Services
Hwys 35 and 61 South
PO Box 447
Lancaster, WI 53813

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Grant County.
2. Petitioner is case head of a FS case.
3. Petitioner's boyfriend works out of the state. He visits petitioner's home on the weekends.

4. O'Brien and Associates investigators conducted an investigation under contract with the agency. O'Brien determined that an overissuance occurred and claimed that \$863 is FS was overissued.
5. The agency issued a FS overissuance notice on July 30, 2014 indicating an \$863 overissuance for the period from April to August 2014.
6. Petitioner appealed.

DISCUSSION

FS eligibility and allotments are based on income and household composition. The Department alleges an overpayment based on its belief that petitioner received an overissuance of FS from April to August 2014 because her boyfriend was a household member who was temporarily absent for part of each week. The overissuance is founded upon an investigation conducted by O'Brien & Associates, a contracted private investigation firm which determined that the boyfriend, [REDACTED] [REDACTED], should have been reported as a household member, and that his income would have reduced the FS allotment that was actually received by petitioner.

Petitioner concedes that her boyfriend lived elsewhere for the weekdays and returned during the weekend. She stated at hearing that she did not think that his sleeping in the home only on the weekend would qualify him as a household member. She explained that his income was not used for the rent or the purchase of food. She also explained that he did not purchase or prepare food together with the family.

At the time of hearing, the agency representative had not provided DHA with copies of the overissuance notice or the Foodshare overissuance worksheet. These were sent after the hearing.

The agency representative explained that O'Brien and Associates conducted the investigation, calculated the overissuance amount, and prepared the documentation for hearing. The investigator testified that [REDACTED]'s truck is registered at the FS case address.

In an overissuance case such as this, the burden falls on the agency at hearing to support the overissuance. This includes proving that there is a basis for the finding as well as proving that the amount sought is the correct amount. The evidence offered to prove that [REDACTED] is living in the home is thin. He just as easily could be determined to live in whatever home it is that he stays at during the five weekdays. [REDACTED] did not testify and the investigator offered little more than the suggestion that [REDACTED] "stays" in the home on the weekend.

The critical problem with this case, however, is that the agency did not prove any income on the part of [REDACTED], what the amount of any income was, and how the investigator calculated that \$863 is the correct amount of the overissuance. Investigator [REDACTED] [REDACTED] testified and was entirely unprepared. He was unable to explain how he calculated the amount of the overpayment. He presented no testimony regarding Mr. [REDACTED]'s job or income, the source of the information her relied upon for employment/income information, or the method of determining that an overissuance occurred. At the time of hearing, neither the agency nor Mr. [REDACTED] had provided state wage record information, employer verification documents, pay stubs, tax returns or any other information showing [REDACTED]'s income. This information is critical. At some income levels, the overissuance would only have meant a reduction of the allotment; while at other levels, the household would have been ineligible entirely. If [REDACTED] earns very little, then adding a person to the household could possibly have meant an increase in FS. Mr. [REDACTED] had no idea how he reached the number he had. Wherever he was testifying from he claimed not to have that information available. Mr. [REDACTED] offered to send records by fax to this ALJ following the hearing. None were received from Mr. [REDACTED]. The agency sent additional information following the hearing including the worksheets. But, there is still no evidence in the record showing employment or income information of [REDACTED] [REDACTED]. I have no reason to believe, based on this record,

that [REDACTED] ever even looked into [REDACTED]'s income or conducted anything more than a few Internet searches and telephone calls.

CONCLUSIONS OF LAW

The agency failed to meet its burden of establishing that is correctly determined FS overissuance liability of \$863.

THEREFORE, it is ORDERED

That this matter is remanded to the agency with instructions to reverse the determination of an overissuance, to cease all collection efforts, and to return any sum already recouped from petitioner. These actions must be completed within 10 days.

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 16th day of September, 2014

\sJohn P. Tedesco
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 16, 2014.

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