



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/159985

PRELIMINARY RECITALS

Pursuant to a petition filed August 18, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Adams County Health and Human Services [“County”] in regard to FoodShare benefits [“FS”], a Hearing was held via telephone on September 18, 2014.

The issue for determination is whether it was correct to establish the following Claim against petitioner for an overpayment of FS and intercept petitioner’s Wisconsin State Income Tax refund: Claim Number [REDACTED] for the time period December 1, 2013 to March 31, 2014 in the total amount of \$1,525.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Mary Gruber, ESS
Adams County Health and Human Services
108 E North Street
Friendship, WI 53934-9443

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 20 years old) is a resident of Juneau County, Wisconsin.

2. The County established the following Claim against petitioner for an overpayment of FS: Claim Number [REDACTED] for the time period December 1, 2013 to March 31, 2014 in the total amount of \$1,525.00.
3. Petitioner was sent a computer-generated *Notification of FS Overissuance* notice dated March 7, 2014 relating to FS overpayment in *Findings of Fact #2*, above; he never received that notice.
4. The FS overpayment in *Findings of Fact #2*, above, resulted from the fact that the household of which petitioner was a part had unreported earned income and the household was over the FS income limit; the head of the FS household, which was not petitioner, failed to report earned income from her job at [REDACTED].

DISCUSSION

The state shall, at least annually, certify to the Department of Revenue amounts that it has determined it may recover resulting from an overpayment of Food Stamps ["FS"], an overpayment of Aid to Families with Dependent Children ["AFDC"], an overpayment of Medical Assistance ["MA"], and an overpayment of Wisconsin Works ["W-2"]. Wis. Stat. § 49.85(2) (2011-12).

The state must notify the person of several things, including that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and that the person may appeal the decision by requesting a hearing. Wis. Stat. § 49.85(3) (2011-12).

The Hearing right is described as follows:

"If a person has requested a hearing under this subsection, the [state] shall hold a contested case hearing under s. 227.44, except that the [state] may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing."

Wis. Stat. § 49.85(4) (2011-12).

In this case petitioner never received the March 7, 2014 *Notification of FS Overissuance* that was sent to him and, therefore, never had a prior opportunity for a Hearing. Petitioner's testimony was credible in this regard. It follows that the above quoted statutory language does not limit the scope of the issues to be considered here.

Petitioner does not dispute that he was part of the FS household during the time period of the overpayment and that the household was over the FS income limit due to unreported income.¹ Instead,

¹ For purposes of FS, income includes all household income from wherever source, excluding only certain specific items not relevant here. 7 C.F.R. §§ 273.9(b) & (c) (2011); *FoodShare Wisconsin Handbook* ["FSH"], 4.3.1. Earned income of any household member age 18 years old or older is to be included in the FS household income. 7 C.F.R. § 273.9(c)7. (2011); FSH, 4.3.2.2.3. The basic definition of a "household" for purposes of FS is a group of individuals who live together and customarily purchase food and prepare meals together for home consumption. 7 C.F.R. §§ 273.1(a)(3) (2011); FSH 3.3.1.

petitioner testified that he never lied to the FS program, that he did not know the primary person was working at [REDACTED] and that he did not know the primary person put him down as part of the FS household and received FS. Petitioner's testimony was credible and sincere. However, as explained below, he is still liable for the FS overpayment.

The law provides that each person who was an adult member of the FS Household when the overpayment occurred is responsible for paying the claim. 7 C.F.R. § 273.18(a)(4)(i) (2011); *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.2. Furthermore, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault. All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2011); FWH 7.3.1.1 & 7.3.1.2. Therefore, petitioner can be held liable for the FS overpayment and made to repay it even though he did not cause the overpayment.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to establish the following Claim against petitioner for an overpayment of FS and intercept petitioner's Wisconsin State Income Tax refund: Claim Number [REDACTED] for the time period December 1, 2013 to March 31, 2014 in the total amount of \$1,525.00.

NOW, 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 29th day of September, 2014

\sSean P. Maloney
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 29, 2014.

Adams County Health and Human Services
Public Assistance Collection Unit