



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
Redact

DECISION

FOP/160706

PRELIMINARY RECITALS

Pursuant to a petition filed September 19, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on November 12, 2014, at Milwaukee, Wisconsin. At the request of petitioner, a hearing set for October 14, 2014 was rescheduled. The hearing record was held open for the submission of closing arguments to DHA. Both parties timely submitted their closing arguments to DHA which are received into the hearing record.

The issue for determination is whether Milwaukee Enrollment Services (MES) met its burden of proof to establish that it is correctly and accurately seeking recovery of a FoodShare (FS) overpayment from petitioner in the amount of \$2,296 during the period of March 1, 2012 to October 31, 2012, based allegedly upon petitioner residing in her mother's (Redact dact)'s FS household and was thus jointly and severally liable for that overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact

Petitioner's Representative:

[Redacted] Redact Redact
Redact
[Redacted]

Respondent:

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

By: Eraina Cooper, health care supervisor
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redact]) is a 20 year old female resident of Milwaukee County who resides with her son, KW.
2. The petitioner's mother is [Redact Reda Redact] who received FoodShare benefits during the period of March, 2012 through October, 2012.
3. The petitioner and KW were in petitioner's mother's FS household for March, 2012, but both of them moved from Ms. [Redact]'s FS household as of April, 2012 (resulting in Ms. [Redact]'s reduced FS household from five to three persons).
4. In a June 24, 2013 decision in FOP-149003 regarding petitioner's mother, ALJ Tedesco concluded that [Redact Redact] was liable for the FS overpayment during the period of March, 2012 through October, 2012 in the amount of \$2,296 because Ms. [Redact] failed to timely report her earned income which caused her to be income ineligible for FS benefits during the period of March through October, 2012.
5. MES sent a June 5, 2013 manual FS overpayment notice to the petitioner stating that she received an overpayment of \$2,296 during the period of March 1, 2012 to October 31, 2012, due to allegedly failing to report her mother's income on her March, 2012 application/SMRF.
6. Milwaukee Enrollment Services (MES) was unable to establish with any reliable evidence that petitioner and her son were part of petitioner's mother's FS household as of April, 2012, and was thus not liable for her mother's FS overpayment for the overpayment period from April through October, 2012.
7. Petitioner concedes that she was jointly and severally liable for her mother's FS overpayment only for the month of March, 2012 in the total amount of \$602, during which she was a member of her mother's FS household.
8. The petitioner's attorney appealed on behalf of the petitioner regarding her FS overpayment to DHA on September 19, 2014, and such appeal was timely for the reasons set forth in Ms. [Redact]'s written closing argument.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), emphasis added; see also FoodShare Wisconsin Handbook, Appendix 7.3.1.9.

"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). In addition, 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 . . .

Therefore, MES was seeking recovery of the FS overpayment from the entire period of March, 2012 through October, 2012 not only from petitioner's mother ([Redact Redact]), but also from the petitioner, based upon alleged joint and several liability for the household's FS overpayment.

In a Fair Hearing concerning the propriety of an overpayment determination, **the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case.** The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In this case, as indicated in the above Findings of Fact, the MES representative had insufficient reliable evidence to establish that petitioner and her son resided with the petitioner's mother in her FS household after March, 2012. In fact, MES's own October 30, 2014 FS overpayment worksheet specifically indicates that the FS household was reduced from five to three persons as of April, 2014 (after petitioner and her son moved out of her mother's home). MES clearly removed petitioner and her son from Ms. **Redact**'s FS household effective April, 2014.

Furthermore, during the November 12, 2014 hearing, petitioner testified persuasively that she and her son moved during March, 2012 from her mother's FS household. She moved due to family disputes resulting in the police being called to the home. Petitioner testified that she only continued to use her mother's address as her mailing address, as she was moving from place to place and needed a stable mailing address. However, in her written closing argument, Attorney **Redact** conceded that petitioner was jointly and severally liable for her mother's FS overpayment only for the month of March, 2012 in the total amount of \$602, during which she was a member of her mother's FS household. Ms. **Redact** also argued correctly that any payments by petitioner should be credited by MES against that total \$602 overpayment liability amount. MES was unable to provide reliable, non-hearsay evidence to refute the petitioner's case. Accordingly, based upon the above, I conclude that the Department has failed to meet its burden of proof to establish that the petitioner was overissued FoodShare benefits in the amount of \$2,296 during the period of March 1, 2012 to October 31, 2012 because MES failed to establish with reliable evidence that petitioner resided in her mother's (**Redact dact**'s) FS household after March, 2012 and was thus she was not jointly and severally liable for the overpayment after March, 2012.

CONCLUSIONS OF LAW

1. The Department failed to meet its burden of proof to establish that the petitioner was overissued FoodShare benefits in the amount of \$2,296 during the period of March 1, 2012 to October 31, 2012 because MES failed to establish with reliable evidence that petitioner resided in her mother's (**Redact dact**'s) FS household after March, 2012 and was thus she was not jointly and severally liable for the overpayment after March, 2012.
2. The petitioner was not a liable adult in the FS household of her mother during the overpayment period of April, 2012 through October, 2012, but was a member of her mother's FS household for the overpayment month of March, 2012 with a total liability of \$602 for that one month.

THEREFORE, it is

ORDERED

The matter is remanded to MES with the following instructions: a) pursue the collection of a FS overpayment against the petitioner only for the month of March, 2012 in the total amount of \$602 during which petitioner was a member of her mother's FS household (any payments made by the petitioner should be credited against that total \$602 overpayment liability amount); and b) MES should remove and rescind the petitioner's FS overpayment during the period of April, 2012 through October, 2012, within 10 days of the date of this Decision.

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 15th day of December, 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 December 15, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney Redact Redact