



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

ENE/161135

PRELIMINARY RECITALS

Pursuant to a petition filed October 6, 2014, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Chippewa County Department of Human Services in regard to Energy Assistance, a hearing was held on November 18, 2014, at Chippewa Falls, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to consider whether the petitioner must repay an alleged overpayment of Energy Assistance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703

By: Rhonda Kimmer, Energy Services Worker
Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Chippewa County.
2. The petitioner received Energy Assistance on December 13, 2013, for the 2013-14 heating season. His total benefits were \$5,680.88.

3. When the petitioner applied for Energy Assistance, he reported that his wife did not live with him.
4. The petitioner's wife has lived with him since May 2011. She applied for public benefits on December 30, 2011, May 1, 2012, and March 24, 2014. She also verified her address on May 18, 2011. Each time, she listed her address as the same as the petitioner's.
5. The petitioner has refused to voluntarily repay the Energy Assistance benefits he received in the 2013-14 heating season. The county agency now seeks to compel him to repay those benefits.

DISCUSSION

Last year, the petitioner received \$5,680.99 in Energy Assistance, a state-run program established by federal law. *See* 42 USC § 8621, et seq. and Wis. Stat. § 16.27. The county agency seeks to recover these benefits because it contends that he falsely claimed that this wife did not live with him when he applied. This would affect his eligibility because eligibility depends the combined income of all persons who live in the house not exceeding 60% of the state mean on the date of application. *WHEAP Program and Operations Manual*, §§ 2.2.6 and 2.3.2

I have little trouble finding that the two lived together. He claims that she was staying with a friend much of the time because he would drink too much and “get growly.” She may have sometimes stayed elsewhere, but the evidence indicates that her residence was the same as his. She applied for public benefits on December 30, 2011, May 1, 2012, and March 24, 2014. She also verified her address on May 18, 2011. Each time, she listed her address as the same as his; nor did she ever indicate that she lived anywhere else during this time. Although the petitioner testified that she was gone much of time, he could not say when she was gone. The friend she stayed with submitted a letter indicating that this occurred occasionally for a week or more but that he did not know what specific dates she was there. She did not testify or submit any statement. Because she can be found jointly responsible for any claim against the petitioner, which makes it in her interest to support his testimony, her lack of any statement or testimony supporting him undermines his claim.

But even if he received benefits he was not entitled to, the county agency can recover those payments through administrative proceedings before the Division of Hearings and Appeals only if the Division has jurisdiction to hear the matter. As part of an administrative agency, the Division has “only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates.” *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). This finding is consistent with the state supreme court's earlier statement that “[n]o proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds.” *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944). Thus, in order to consider this appeal, the Division must rely upon some legal authority that clearly allows it to do so.

I find none.

Neither 42 USC § 8621, et seq., nor Wis. Stat. § 16.27, the federal and state statutes pertaining to Energy Assistance, provides a mechanism for recovering overpayments from recipients. Nor does Wis. Stat. Chapter 49, which pertains to public assistance benefits, or Wis. Admin. Code, § HA 3.03, which provides and limits the Division's authority to hear appeals. The program's operations manual does discuss overpayments, but it only provides authority for recovering them from those who make voluntary repayments, and then only if the payment was made to the client. Its provisions for recovering overpayments, which are found at *WHEAP Program and Operations Manual*, § 7.10, state in their entirety:

1) The local agency must establish a separate file on overpayments the client is required to repay for single party heat or PB (electric) regular benefits, crisis benefits, or emergency furnace benefits. The file should include:

- A list of those cases in which an overpayment may have been made;
- the date the recipient was notified of the overpayment;
- The disposition made, i.e., recovery; and
- The date and amount of any recovery or the amount of un-collectible funds. The local WHEAP agency must add a WHEAP system note on the application to explain the overpayment/repayment situation..

2) Only Regular Heat and PB Benefits canceled during the heating season will be recouped by the WHEAP System through subsequent regular heat or PB payments. Most repayments of regular benefits can be performed on the WHEAP system. Voluntary repayments are required when the regular benefit has been paid with a check to the applicant (single-party check). **The local agency must ask the recipient to voluntarily repay an overpayment.** If he/she agrees to repay, use a repayment agreement. A model WHEAP Repayment Agreement form can be found on the Home Energy Plus Web site.

3) All overpayments must be refunded to the Division **within one year from the date of the check which included the overpayment.**

Overpayments should be payable to DOA/Division of Energy Services and be mailed by the local WHEAP agency to the Division with a note specifying the following:

- Name
- Full address
- Reason for the overpayment
- Indicate Heating, Non-Heating or Crisis Benefit, Furnace Benefit
- Name of WHEAP Agency
- Date of the initial energy check or the appropriate heating season

If the recipient chooses to pay in monthly installments, the local agency must send the payments to the Division as they are received. The local agency is responsible for ensuring that the Division receives the full overpayment within one year from the date of the check. However, if the recipient requires a repayment plan in excess of one year, full payment is expected to be made as soon as possible.

There is no mechanism for recovering overpayments made to a vendor from the recipient. *See Id.*, §§ 7.8.1 – 7.8.3.

Because I can find no authority to consider this matter, I must dismiss it. If the agency continues to seek a legal means to compel the petitioner to repay his benefits, it must refer this to its corporation counsel or district attorney, who would have to determine whether there is a legal basis to proceed civilly or criminally in circuit court. But the Division of Hearings and Appeals cannot sanction an administrative remedy for recovering the claim.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals has no jurisdiction to consider any action pertaining to the county agency's attempt to compel the petitioner to repay any Energy Assistance benefits he has received.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed because the Division of Hearings and Appeals has no jurisdiction to determine whether the county agency can compel him to repay his Energy Assistance benefits.

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 Administration, 101 East Wilson Street, 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 December, 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 December 10, 2014.

Chippewa County Department of Human Services
DOA - Energy Assistance