



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]

DECISION

FOP/161186

PRELIMINARY RECITALS

Pursuant to a petition filed October 10, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Wood County Human Services - WI Rapids in regard to FoodShare benefits (FS), a hearing was held on December 04, 2014, at Wisconsin Rapids, Wisconsin.

The issue for determination is whether the petitioner is liable for a \$7,599 FS overissuance.

There appeared at that time and place 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: Beulah Garcia

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Wood County.
2. Petitioner has a child in common with [Redacted].

3. [Redact] was the case head of a FS case from 2011 to 2013. The FS case included herself and two children. During the pertinent times of the overissuance, petitioner was also living in the home with the child, [Redact], [Redact], and another child.
4. [Redact] had not reported petitioner as living in the household.
5. The agency learned that petitioner claimed [Redact] and the two children as tax dependents in 2012 and 2013.
6. Petitioner was employed and earned income during the pertinent periods averaging \$2,562 per month.
7. On 9/25/14 the agency issued FS overissuance notices indicating an overissuance of \$5,399 for the period from 12/1/11 to 11/30/12 and a notice indicating a \$1,637 overissuance from 12/14/12 to 5/31/13.
8. Petitioner appealed.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). **All adult members of an FS household are liable for an overpayment.** 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2 (emphasis added).

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii). The basis and calculation for the overissuances are set forth in the overpayment worksheet found in ex. #1. Petitioner did not dispute these calculations.

[Redact] reported to the agency that she did not report petitioner as part of the household because he did not purchase or prepare food with her or the children. But, under FS rules, this does not matter:

3.3.1.3 Relationship Rules

7 CFR 273.1(b)(1)

The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses and spouses,
2. **Biological (unless no longer a parent because of adoption), adoptive, or step-parents and their children under the age of 22,**
and
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

(Emphasis added). Thus, petitioner's income should have been included in the household. The household, therefore, received more FS than it was entitled to receive.

Petitioner's argument at hearing was that he was not aware that [Redact] was receiving FS and he should not be liable. But, the rules indicate otherwise. Petitioner must be part of the household as previously

stated and all adults in a household are liable for an overissuance. It does not matter whether he applied for the benefits. His son and the family he was living with benefitted. If the overissuance is recovered from **Redact** then petitioner’s liability will be offset by that amount.

CONCLUSIONS OF LAW

The agency did not err in determining the overissuance liability.

THEREFORE, it is ORDERED

That this matter is 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 16th day of December, 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 December 16, 2014.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability