



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

|

[REDACTED]
ENE/159789

PRELIMINARY RECITALS

Pursuant to a petition filed August 08, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Washington County Department of Social Services in regard to Energy Assistance, a hearing was held on October 21, 2014, at West Bend, 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:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703

By: Kay Lucas & Nicole Thompson
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Washington County.
2. Petitioner applied for energy assistance in October 2013. That application was approved.

3. The local agency subsequently became concerned that Petitioner had not reported that his spouse was in the home and investigated that concern. This was triggered, at least partially, by a BadgerCare+ application on which Petitioner reported her in his home.
4. The agency conclude Petitioner's spouse had been in Petitioner's home at the time of the October 2013 energy assistance application and rescinded the earlier approval of the October 2013 energy assistance application.
5. The agency sent Petitioner a letter dated July 2014 that informed him the energy assistance agency was seeking recovery of the \$737 of energy assistance funds paid on Petitioner's behalf based upon the October 2013 application. While the notice indicated the Division of Hearings and Appeals address and inform Petitioner that he could appeal, no time frame was given within which an appeal had to be filed.
6. This appeal was filed on July 9, 2014.
7. Petitioner has not voluntarily repaid the Energy Assistance benefits he received in the 2013-14 heating season.

DISCUSSION

For the Energy Assistance program, a household consists of all persons who live in the house on the date of application. *WHEAP Program and Operations Manual*, § 2.2.6. The county agency seeks to recover Petitioner's Energy Assistance benefit because it contends that he falsely claimed that this wife did not live with him when he applied. He admits that his claimed she was in the household when filing a BadgerCare+ application but now says that was a lie – he was trying to obtain health benefits for her. He cannot have it both ways and it makes any testimony from him incredible.

Nonetheless, 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.2nd 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 force Petitioner to repay an overpayment unless he does so voluntarily, I must dismiss the county agency’s claim. It can still 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 agency cannot continue to seek an administrative remedy before the Division of Hearings and Appeals.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals has no jurisdiction to compel Petitioner to repay any Energy Assistance benefits he has received.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it certify that it has ended its attempt to recover Energy Assistance benefits Petitioner received during the 2013-14 heating season. This decision pertains only to action the agency takes before the Wisconsin Division of Hearings and Appeals. It does not prevent it from taking any action in state or federal courts.

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 Milwaukee,
Wisconsin, this 8th day of January, 2015

\sDavid D. Fleming
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 January 8, 2015.

Washington County Department of Social Services
DOA - Energy Assistance