FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/162255

PRELIMINARY RECITALS

Pursuant to a petition filed November 25, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to an overpayment of FoodShare benefits (FS), a telephonic rehearing was held on March 03, 2015, at La Crosse, Wisconsin.

The issue for determination is whether the respondent has established that petitioner's FoodShare overpayment was not discharged in petitioner's bankruptcy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Jennifer Bach
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of La Crosse County.
2. Petitioner filed for Chapter 7 bankruptcy, and on January 17, 2014, she filed an amended notice of creditors that included the State of Wisconsin Department of Health Services' overissuance

claim in the amount of $1,352.00. The Bankruptcy Court issued a discharge on February 24, 2014. Exhibit 8.

3. On July 16, 21014, the respondent sent a notice to petitioner indicating that the respondent was resuming collections efforts following the lifting of the bankruptcy stay. The respondent's notice indicated that the FS overpayment debt was a domestic support obligation, and therefore non-dischargeable in bankruptcy. Exhibit 9.

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, § 7.3.1.2.

Under 11 U.S.C. §524, a discharge in bankruptcy has several results that include an injunction against any action to continue recovery of a debt. In this case petitioner and her husband filed bankruptcy and received a discharge. The prior decision in this case was rendered in petitioner's favor as the respondent failed to counter the petitioner's contention that her FS overpayment debt had been discharged in bankruptcy. At that initial hearing, no evidence or testimony was presented by the respondent to establish that the overpayment was non-dischargeable, nor that the debt was not, in fact, discharged. To the contrary, the petitioner testified that the debt was discharged in bankruptcy, and supplied evidence supporting that testimony.

At rehearing, the respondent proffered support for its contention that the debt was not, in fact, dischargeable. Specifically, the respondent cited to specific case law in support of its position. See, *In re Ratliff*, 390 B.R. 607 (Bankr. E.D. Wis. 2008) and *In re Schauer*, 391 B.R. 430 (Bankr. E.D. Wis. 2008). The *Ratliff* decision stated that,

> *In re Seibert,* 914 F.2d at 105, a pre-BAPCPA decision, addressed whether the expenses of "pregnancy and confinement" were a debt owed to a child for the child's support, noting that medical expenses are *615 in the nature of support. In its discussion, the court of appeals for this circuit observed that courts have found that not only support in the traditional sense of periodic child support is nondischargeable, but that debts in the nature of support are also non-dischargeable. *Id.* (citing *In re Harrell,* 754 F.2d 902, 904 (11th Cir.1985); *In re Vails,* 79 B.R. 270, 271 (Bankr.W.D.La. 1987)).
>
> With respect to the former Section 523(a)(5), the court of appeals for this circuit held that: "[i]n order to establish whether a debt related to a minor child is dischargeable under § 523(a)(5), a court must determine 1) whether the obligation is a debt to the child or validly assigned by the child to a governmental entity and 2) whether the obligation is one of support." *In re Platter,* 140 F.3d 676, 681 (7th Cir. 1998). In *Platter,* the debtor sought to discharge a support obligation owed to the Department of Family and Children Services for sums the agency had paid to support the debtor's child in a residential treatment program. The court held that the plain meaning of § 523(a)(5) did not cover the situation where the debtor owed a governmental agency directly for the support of the debtor's child. *Id. See also, Green County Corp. Counsel v. Kline,* Nos. 05-17777-7, 05-252-7, 2006 WL 2882951, *1 (Bankr.W.D.Wis. April 12, 2006) (holding, under former § 523(a)(5), that a debt owed to the county for unpaid guardian *ad litem* fees was not a debt to the child).
>
> The Department's claim arises from its determination that Ratliff received food stamp overpayments. In considering the nature of the food stamps, the Court notes that the federally-funded food stamp program provides food stamps to low-income households to alleviate hunger and malnutrition among the economically disadvantaged. *See Stone v. Hamilton,* 308 F.3d 751,

752 (7th Cir.2002) (citing 7 U.S.C. § 2011); *See also,* 7 C.F.R. § 271.1(a). Congress authorized the food stamp program in 7 U.S.C. §§ 2011 through 2036. Although funded by the federal government, each state must administer the program in compliance with the Federal Food Stamp Act and the accompanying regulations. *Stone,* 308 F.3d at 752 (citing 7 U.S.C. § 2020, 7 C.F.R. § 273.18(a)(2)-(3)). Section 2022 of Title 7 of the United States Code provides for the recovery of food stamp overpayments. The majority of funds collected by a state as an overpayment are turned over to the federal government. *See* 7 U.S.C. § 2025. However, § 49.793(2) of the Wisconsin Statutes further states that the Department may allow counties to retain a portion of the amount of the overpayment that the state is permitted to retain under 7 U.S.C. § 2025.

The Department claims overpayment of food stamps that were used to support Ratliff's children. The benefit amount was based, in part, on the presence of Ratliff's three children within her household. See 7 C.F.R. §§ 273.1(a), 273.1(b)(1), 273.10, 273.12. Those food stamps enabled Ratliff to obtain food, a basic form of support for them. *See In re Gianakas,* 917 F.2d 759, 763 (3rd Cir.1990) (stating "[a]n obligation that serves to maintain daily necessities such as food, housing and transportation is indicative of a debt intended to be in the nature of support." (citing *In re Yeates,* 807 F.2d 874, 879 (10th Cir.1986))). Thus, the Court concludes that the food stamp overpayment was in "the nature of support" of the children of the Debtor, Ratliff.[8]
*616 Ratliff asserts that the food stamp overpayment should not be deemed to be support because as overpayments the food stamps benefits exceeded that needed to support the family. Ratliff cites no case law in support of her contention. Nor has this Court found any reported case law on the issue.

However, the Court notes that, at the time of their issuance, the food stamps were allocated to Ratliff for the support of her children (and her own) based on her income and reported household size. In determining whether an obligation is for alimony, maintenance, or support, the majority of courts confine their assessment of the issue to the time the obligation is established. *See generally, In re Harrell,* 754 F.2d 902, 906-07 (11th Cir.1985) (confining the inquiry under the discharge provision of § 523(a)(5) to whether the obligation arose out of, or in any way expresses, the duty of support); *Draper v. Draper,* 790 F.2d 52, 53-55 (8th Cir.1986) (same); *Forsdick v. Turgeon,* 812 F.2d 801, 803-04 (2nd Cir.1987) (same); *Sylvester v. Sylvester,* 865 F.2d 1164, 1166 (10th Cir.1989)(same); *In re Gianakas,* 917 F.2d at 763 (same). *See also, In re Messnick,* 104 B.R. 89, 92 (Bankr.E.D.Wis.1989); *Bowman v. Strack,* Nos. 92-13420-7, A94-1089-7, 1994 WL 16005181, *4 (Bankr. W.D.Wis.1994) (noting every Court of Appeals to address the issue has rejected *In re Calhoun,* 715 F.2d 1103, 1109 (6th Cir. 1983) three-part test[9] and held that the bankruptcy court is to look only at the circumstances of the parties at the time of the divorce, not their present needs.) Applying the principle in this context, this Court concludes that the food stamps overpayments were for the support of Ratliff's children.

While the other prongs of a "domestic support obligation" are not contested on appeal, the Court completes the analysis by finding first that the amount is owed to a governmental unit; that is, the Department. *See* 11 U.S.C. § 101(14A)(A)(ii). Second, the debt was established before the order for relief by reason of a determination made in accordance with applicable nonbankruptcy law by the Department. *See* 11 U.S.C. § 101(14A)(C)(iii). Finally, *617 the debt was not assigned to a governmental entity. *See* 11 U.S.C. § 101(14A)(D). Based on the foregoing, this Court concludes Ratliff's debt to the Department for the overpayment of support, in the form of food stamps, falls within the ambit of the definition of a "domestic support obligation" under § 101(14A).

In re Ratliff, 390 B.R. 607 (Bankr. E.D. Wis. 2008).

Similar to the *Ratliff* matter, the petitioner testified at rehearing that the FS funds received by her household assisted in the support of her children. The respondent did not rebut the respondent's assertion that the FS overpayment constitutes a domestic support obligation that is non-dischargeable in bankruptcy. As such, I must conclude that the respondent has correctly asserted an overpayment of FS benefits to the petitioner for which the petitioner is liable.

CONCLUSIONS OF LAW

Petitioner's FS overpayment constitutes a domestic support obligation that is non-dischargeable in bankruptcy.

THEREFORE, it is **ORDERED**

That the petitioner's appeal 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 11th day of March, 2015.

_____

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on March 11, 2015.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability