



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/162445

PRELIMINARY RECITALS

Pursuant to a petition filed December 05, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Trempealeau County Department of Social Services in regard to FoodShare benefits (FS), a telephonic hearing was held on January 15, 2015, at Whitehall, Wisconsin. At the request of the parties, the record was held open for consecutive briefs to be submitted to the Division of Hearings and Appeals (DHA) and to the other party. Both parties timely submitted their briefs to DHA which are received into the hearing record.

The issue for determination is whether the county agency is correctly seeking repayment of a FoodShare (FS) overpayment of \$14,406 to the petitioner for a FS group of six from the period of March 21, 2012 to November 30, 2014 as client error, due to petitioner's failure to report to the agency her monthly adoption assistance benefits of \$1,806 which started January, 2012 resulting in zero FS benefits during the entire FS overpayment period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Robert Uebele, ESS

Trempealeau County Department of Social Services
36245 Main St.
PO Box 67
Whitehall, WI 54773-0067

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Trempealeau County who resided in a household of six (petitioner, her husband, [REDACTED], and four children) during the period of March, 2012 through November, 2014.
2. During 2011, petitioner received Foster Care assistance for two foster children for which she received \$1,806 per child. Those foster care payments were disregarded as income for FoodShare (FS) determination purposes during 2011. One of the children died, and the petitioner's foster assistance was reduced to \$1,806 for the one remaining foster child, [REDACTED].
3. The petitioner's husband is self-employed.
4. The petitioner's FS case was transferred from the Trempealeau County agency to the Western Region for Economic Assistance (WREA) Consortium during January, 2012.
5. The petitioner is the primary person in a FS household of six for which she received FoodShare (FS) benefits during the period of March 21, 2012 to November 30, 2014.
6. The petitioner failed to report to the county agency that she received monthly adoption assistance payments of \$1,806 for her adopted child ([REDACTED]) during the entire period of January, 2012 through November, 2014. Exhibit 14. The petitioner who had been receiving foster care payments for [REDACTED], began receiving the monthly adoption assistance as of December 30, 2011.
7. The petitioner failed during four reviews or in six month report forms (March 14, 2012, April 3, 2013, Marc 10, 2014, and September 5, 2014) to report her monthly adoption assistance to the county agency. Exhibits 1, 3, 6, 8, 12, and 14
8. The county agency did not discover (or become "aware" per BPS/DFS Operations Memo No. 12-20 effective 4-4-2012 of) petitioner's unreported monthly adoption assistance \$1,806 payments until November 10, 2014. Exhibits 13 and 14.
9. The county agency sent November 14, 2014 FoodShare (FS) Overpayment notices to the petitioner in the total amount of \$14,406 for the entire overpayment period of March 21, 2012 through November 30, 2014 (in four overpayment notices), due to client error of petitioner failing to report to the agency her monthly adoption assistance benefits of \$1,806 which started January, 2012 resulting in zero FS benefits during the entire FS overpayment period. Exhibit 15. The calculation of the \$14,406 overpayment is documented and itemized in the FS overpayment worksheets. Exhibits 16 and 17.
10. In Attorney Bern's January 26, 2015 written closing argument, the petitioner stipulated in the first paragraph that: a) "[REDACTED] [REDACTED] does not dispute that she received Adoption Assistance of \$1,806 per month since January 2012; and b) [REDACTED] [REDACTED] does not dispute that FoodShare would have been denied for the period March, 2012 through November, 2014 if the adoption assistance had been counted (See Exhibits 16 and 17)."
11. The petitioner has not made any payment towards the \$14,406 FS overpayment as of the January 15, 2015 hearing date.

### DISCUSSION

All FS applicants and recipients have a duty to accurately and truthfully report income to the county agency. 7 C.F.R. §273.12, "Reporting requirements." Furthermore, a FS recipient has the duty to cooperate in provide accurate and true income information on both his/her FS application and during later reviews. The FS recipient is also required to cooperate with the county agency in verifying all household income in order for the county agency to accurately determine a FS application or recipient's FS

eligibility and benefits. 7 C.F.R. §273.2(d), “Household cooperation.” As explained in the above Findings of Fact, the petitioner failed to report to the county agency that she received monthly adoption assistance income for 1 child (██████) during the entire period of January, 2012 through November, 2014. Exhibit 14.

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), see also, *FoodShare Wisconsin Handbook*, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, *FoodShare Wisconsin Handbook*, App. 7.3.1.9. However, **overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery.** (Emphasis added). *FoodShare Wisconsin Handbook*, 7.3.2.1. Overpayments due to “client error” may be **recovered for up to six years after discovery.** Id.

During the January 15, 2015 hearing, the county agency representative, ESS Robert Uebele, and the agency's investigator, presented a well-organized case, and established that the petitioner failed to timely report to the county agency her monthly Adoption Assistance to the county agency or to WREA for the entire FS overpayment period. The Adoption Assistance monthly payments to petitioner were not discovered until November 10, 2014. As a result, petitioner’s adoption assistance was not budgeted as income to the FS household in determining the petitioner’s FS household benefits for the entire period of March, 2012 through November, 2014. The hearing record is uncontested that the county agency correctly and accurately determined a \$14,406 overpayment based upon the overpayment as client error.

In fact, in Attorney Bern’s January 26, 2015 written closing argument, the petitioner stipulated in the first paragraph that: a) “██████ ██████ does not dispute that she received Adoption Assistance of \$1,806 per month since January 2012; and b) ██████ ██████ does not dispute that FoodShare would have been denied for the period March, 2012 through November, 2014 if the adoption assistance had been counted (See Exhibits 16 and 17).”

However, during the hearing and in his closing argument, Attorney Berns’ central argument was that the petitioner’s FS overpayment was due to agency, not client error, and thus the overpayment should be limited to 12 months before discovery (November 10, 2013 to November 10, 2014). Mr. Berns offered several unpersuasive arguments. First, he alleged that the error was made by the agency in failing to take into account the Adoption Assistance (AA) which was known by the agency social worker, and therefore the Adoption Assistance was aware of those monthly payments. However, petitioner was unable to provide any evidence to refute that both Trempealeau County economic support agency and WREA were unaware that petitioner received any adoption assistance payment during the overpayment period. Mr. Uebele responded correctly that the FS recipient has the responsibility to report all income at every review and in every six month report form, and petitioner failed to do so. In addition, the social worker was working for a separate agency for the foster care, and not in the economic support area for the county agency or WREA. It was client error to “believe” that because a county social worker knew certain information, that WREA was also knowledgeable about petitioner’s monthly Adoption Assistance.

Second, Mr. Berns alleged that the failure on the part of petitioner to report her AA income was based upon petitioner’s “misunderstanding” of the rules concerning Adoption Assistance, and that the petitioner “assumed” Adoption Assistance was replacement for the Foster Care assistance of the same amount (which was not counted as income for FS). Mr. Uebele responded correctly that it was client error for the petitioner to “believe” without checking at all with the economic support agency or HELP desk that because the amount of the monthly payment (\$1,806) remained the same for both Foster Care and Adoption Assistance that somehow petitioner was relieved from the responsibility to report her monthly Adoption Assistance during three years of reviews and SMRFs.

Third, petitioner's attorney argued that the failure to report Adoption Assistance was "unintentional" on the part of petitioner. Such argument is irrelevant to this FS overpayment case because this is not an Intentional Program Violation (IPV) hearing in which intentionality is an element of the violation. Instead, with FS overpayment cases, the intentionality of petitioner's action is not a required criterion to establish FS overpayment client error. Finally, Mr. Berns argued that the agency should be limited in its recover to the November 11, 2013 through November 20, 2014 period as non-client error. Such alleged dates are questionable as the precise period of the petitioner's alleged 12 month recovery. However, as explained in response to petitioner's first argument, the evidence establishes that this FS overpayment was due to petitioner's ongoing failure during four reviews and SMRFs to report her Adoption Assistance and was clearly client error. As client error, the agency may recover the overpayment for six years from the date of discovery or awareness (which is the same in this case).

The petitioner generally contended that it was unfair that the county agency was seeking recovery of the overpayment. However, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: **"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); see also FoodShare Wisconsin Handbook, Appendices 7.3.1.9 and 7.3.1.1. In this case, the county agency was correctly recovering petitioner's FS overpayment as client error. Accordingly, based upon the above, I must conclude that the county agency is correctly seeking recovery of a FoodShare (FS) overpayment in the total amount of \$14,406 to the petitioner for a FS group of six from the period of March 21, 2012 to November 30, 2014, due to client error for petitioner's failure to report at all to the agency her monthly adoption assistance benefits of \$1,806 which started January, 2012 resulting in zero FS benefits during the entire FS overpayment period.

### **CONCLUSIONS OF LAW**

The county agency is correctly seeking repayment of a FoodShare (FS) overpayment of \$14,406 to the petitioner for a FS group of six from the period of March 21, 2012 to November 30, 2014 as client error, due to petitioner's failure to report to the agency her monthly adoption assistance benefits of \$1,806 which started January, 2012 resulting in zero FS benefits during the entire FS overpayment period.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same 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 23rd day of March, 2015

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\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 March 23, 2015.

Trempealeau County Department of Soc Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
Attorney Frederic Berns