



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

FOP/163560

PRELIMINARY RECITALS

Pursuant to a petition filed January 29, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Burnett County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on February 17, 2015, at Madison, Wisconsin.

The issue for determination is whether the agency met its burden at hearing.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

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

By: Redact

Burnett County Department of Social Services
7410 County Road K, #280
Siren, WI 54872

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Dane County.
2. The agency determined an overpayment in the case of FS case head Red... Redact. Petitioner was a named member of the food unit receiving benefits.

3. The agency determined that petitioner was also a liable party as an adult in the household and issued an overpayment notice on 12/19/14 for the period from 5/1/14 to 10/31/14 in the amount of \$852.
4. Petitioner appealed.

### DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2). A Notification of FoodShare Overissuance must be issued. *FoodShare Eligibility Handbook*, §7.3.1.8.

All adult members of *the household* are liable for an overpayment:

All adult [a person who is 18 years old or older] or emancipated minor [A married, widowed or divorced person who is at least 16 years old, a minor who has given birth, a minor emancipated by court order, a minor emancipated by parental consent or a minor living on his or her own who is not supported by parents] food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

*FoodShare Eligibility Handbook*, Appendix 7.3.1.2; see also 7 C.F.R. §273.18(a)(4).

The Department's case was premised upon the conclusion that petitioner was an adult in the household at the time of the overpayment period. That is, that the petitioner was residing in the home and must be included in the petitioner's FS household. Food Share Wisconsin Handbook, sections 3.3.1.3. It is accurate that if the petitioner lived in the same household with [Redacted], and was receiving benefits as a member of the food unit, he must be included as a liable party. The critical question is whether Petitioner was living in the household. Petitioner claims that he was not living with [Redacted], the case head, during the overpayment period. According to the Foodshare Wisconsin Handbook at § 3.3.1.1 "household is defined as follows:

Households consist of all persons *living in or temporarily absent from* the same residence . It is important to enter all household members into CARES to ensure that the correct eligibility determination is made.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. Thus, the burden is on the agency to prove that petitioner was "living in or temporarily absent" from the home from 5/1/13 to 10/31/13. I am not sure the agency realized that it had the burden here. The agency wrote in the summary "no verification has been provided by [Redacted] to the agency proving beyond a reasonable doubt that [Redacted] and [Redacted] were not residing together." The representative suggested the same thing at hearing consistent with his belief that the agency simply had to make a bare and unsubstantiated allegation and wait to see if petitioner could respond persuasively.

The agency provided no evidence at all to show [Redacted]'s residence during the overpayment period other than some paraphrased hearsay from the agency representative relating to some things that [Redacted] [Redacted]

told him. The agency seemed to simply argue that because petitioner was on the FS case that he is liable. Under the rules, this is clearly not the analysis.

### CONCLUSIONS OF LAW

The agency failed to meet its burden to establish petitioner's liability for an overpayment.

**THEREFORE, it is**

### ORDERED

That this matter is remanded to the agency with instructions to reverse the finding of liability of the FS overpayment against petitioner and to cease all collection efforts and to return any sums already recouped. These actions must be completed within 10 days.

### **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 12th day of March, 2015

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\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 March 12, 2015.

Burnett County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability