



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/164691

PRELIMINARY RECITALS

Pursuant to a petition filed March 17, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 16, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits.

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: Jeanie Ortiz

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner was sent a FoodShare Overpayment Notice dated March 3, 2015 that informed Petitioner that she had been over issued FoodShare benefits in the amount of \$2245.00 for the period from March 1, 2014 to February 28, 2015.

3. Petitioner was sent a FoodShare Overpayment Notice dated March 3, 2015 that informed Petitioner that she had been overissued FoodShare benefits in the amount of \$194.00.00 for the period from March 1, 2015 to March 31, 2015.
4. The overissuances alleged here were subsequently re-determined and that redetermination concluded that Petitioner had a FoodShare overpayment of \$611.00 for the period from March 1, 2014 through February 28, 2015 and \$53 for the period from March 1, 2015 through March 31, 2015.
5. Petitioner lives in an adult family home (AFH) – [REDACTED] (hereinafter – the AFH). Per state records, found at the Wisconsin Department of Health Services website this is a licensed AFH. <https://www.dhs.wisconsin.gov/guide/afhwinn.pdf>.
6. The agency had determined Petitioner eligible for FoodShare based on its understanding that Petitioner was paying the AFH rent per month and with the understanding that the residents of AFH buy their own food and keep it separate from the food of the other residents.
7. The agency initiated this overpayment of Petitioner's FoodShare (as well as an apparent discontinuance action that is the subject of a separate appeal and decision – Division of Hearings and Appeals case # 164692) based on information from the AFH that indicates that it buys its residents' food and then redetermined it thinking that the AFH gives the residents \$40 per week to buy food and that food is then kept separate once purchased by the resident.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare 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 *Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSH), Appendix 7.3.2*. Overpayments due to “client error” may be recovered for up to six years after discovery. *FSH, 7.3.2.1*.

Further, in an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. A petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

The agency determined that there is an overissuance of FoodShare in this case because it first thought that all of Petitioner's meals were paid for by the AFH. It amended the overissuance to include \$40.00 per week of unearned income for the funds provided to Petitioner by the AFH to grocery shop. It is now uncertain that this was correct and, along with Petitioner, would like some guidance as to how to handle this situation.

FoodShare regulation is found in the FoodShare Wisconsin Handbook (FSH) and the Federal Code of Federal Regulations CFR. Adult Family Homes are licensed and regulated via the Wisconsin Administrative Code.

The FoodShare Wisconsin Handbook states the following with regard to FoodShare eligibility for residents of AFHs:

3.2.1.5.2 Adult Family Home (AFH)

An AFH is a type of group living arrangement where care and maintenance above the level of room and board (but not including nursing care) are provided in a private residence by the care provider whose primary domicile is this residence for 3 or 4 adults, or more adults if all of the adults are siblings, each of whom has a developmental disability.

The individual in an AFH who is receiving foster care or paying board may be in their own FoodShare group if they wish.
FSH, §3.2.1.5.2.

The Code of Federal Regulations does not permit residents of institutions to receive FoodShare where the institution provides more than 50% of three meals per day. *7 CFR 273.1(b)(6)(vi).*

The term ‘board’ is not defined in the CFR or in the FSH. The Merriam Webster definition is “... to provide with regular meals and often also lodging usually for compensation.” *Miriam Webster online dictionary, found at http://www.merriam-webster.com/dictionary/board.*

Adult family homes are licensed and regulated by the Wisconsin Department of Health Services. That regulation requires that the AFH have a written agreement in place with its residents that describes what is being paid, how much and for what. Further, the law requires that the AFH provide adequate nutrition for its residents:

- ...
- 4. The amount, source and method of payment for providing care and maintenance to the resident of the home, specifying any costs for which the resident will be liable and whether the service coordinator agrees to be responsible for meeting the financial security requirement under s. DHS 82.04 (3). If the service coordinator is responsible for financial security, the agreement shall describe how resources will be made available to the sponsor in the event that payments to the sponsor for resident are not received;
- 5. A statement about who will exercise control over the resident’s funds, which shall be a decision of the resident or the resident’s guardian, if any, and whether or not those funds will be maintained in a bank account. If the sponsor agrees to exercise control over the resident’s funds, the sponsor shall deposit resident funds in a separate bank account opened for the resident if the balance of the resident’s personal funds exceed \$200, shall keep records that account for the receipt and expenditure of all of the resident’s funds which the sponsor controls, including any interest or dividends earned, and shall provide the resident or the resident’s guardian, if any, with an accounting of the resident’s funds on request;

...
Wisconsin Administrative Code, §DHS 82.06(3)(e)4 and 5.



- (4) NUTRITION.** (a) The sponsor shall provide each resident with a quantity and variety of foods sufficient to meet the resident’s nutritional needs and preferences and to maintain his or her health.
- (b) The sponsor shall provide to each resident or ensure that each resident receives 3 nutritious meals each day. This requirement does not apply to the sponsor if a meal is included in other programming in which the resident participates and is paid for by the provider of that programming.
- (c) Food shall be prepared in a sanitary manner.
- (d) Residents shall be routinely served their meals in common dining areas with other household members.
- (e) Meals prepared by the sponsor shall take into account special physical and religious dietary needs of residents.

Wisconsin Administrative Code, §DHS 82.07(4).

‘Sponsor’ is defined as follows:

(14) “Sponsor” means the person certified to operate an adult family home who is responsible for the home, whose primary domicile is the home and who provides care and maintenance to residents of the home.

Wis. Admin. Code, §DHS 82.02(14).

It should also be noted that FoodShare regulation does not permit FoodShare for specialized diets. In general, a household must initially pass a gross income limit. The FoodShare eligibility calculation

process allows for certain deductions from gross income to arrive at a “net income” then tested against a “net income limit”. The determination of a person’s FoodShare allotment is made by budgeting all earned and unearned income of the FoodShare household. *FSH, §4.3; 7 C.F.R. §273.9(b)*. Certain expenses are deducted from income, *FSH, §4.6; CFR 273.9(c)*. The FoodShare allotment is calculated pursuant to *7 C.F.R. § 273.9*. The maximum FoodShare allotment amounts, based on household size, are listed at *FSH, §8.1*.

From all of the above it would seem that residents of an adult family home in Wisconsin should be having all of their nutritional needs met by the adult family home. Nonetheless, the Wisconsin FSH states that a resident of an adult family home paying board, which usually means paying for meals, may be on a separate FoodShare case.

Again, the burden of proof lies with the party seeking to change the status quo; here that is the agency. The evidence has not been developed to meet that burden; I am, therefore, declining to sustain an overissuance against Petitioner at this time. While the situation is, admittedly, very confusing, there is simply not enough information available to me to conclude that there is an overissuance or, if an overissuance, the amount of that overpayment.

While an adult family home in Wisconsin is supposed to be meeting Petitioner’s nutritional needs it is not clear if the AFH here is doing that or if it has some other arrangement with Petitioner. The adult family home staff member who brought Petitioner to hearing was unable to give detail as to how Petitioner’s AFH housing costs are paid for. She thought that the County paid for the services provided by the adult family home and that Petitioner paid room and board separately. If that is so, there was no evidence available to determine how much is paid for ‘board’ and how much for ‘room’. Petitioner does not handle her own funds – she has a payee. There are resources available for the agency to delve into this further. At minimum, this could include the written agreement between Petitioner and the AFH, the management of the AFH, Petitioner’s payee, the plan of care for Petitioner, Petitioner’s social worker, Petitioner’s guardian (if any), the State Department of Health Services regional staff that oversees adult family homes in the northeast region and, perhaps, other evidence to which these sources have led.

CONCLUSIONS OF LAW

That the evidence presented is not sufficient at this time to demonstrate that Petitioner was overissued FoodShare benefits.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to reverse the overissuances involved here. This must be done within 10 days of the date of this Order. The agency may reinitiate a claim if it chooses to do so after a more comprehensive evaluation of the ‘board’ or meal provision arrangement between Petitioner and her AFH residence. Petitioner may appeal any future overpayment determination.

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 Milwaukee,
Wisconsin, this 12th day of May, 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 May 12, 2015.

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