



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/165439

PRELIMINARY RECITALS

Pursuant to a petition filed April 17, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Ozaukee County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on May 14, 2015, at Port Washington, Wisconsin.

The issues for determination are whether Petitioner was overissued FoodShare benefits and, if so, whether the overissuance was correctly calculated.

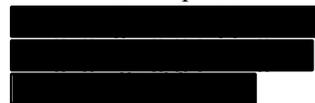
There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: PahouaVang

Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

This hearing was combined with a hearing for Petitioner's spouse; nonetheless, a separate decision is required though the two cases and decisions are very similar.

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Ozaukee County.

2. Petitioner was sent 4 Notices of FoodShare Overpayment, all dated March 13, 2015, that collectively informed Petitioner that he had been overissued FoodShare benefits in the amount of \$15,402.00 during the period of January 1, 2011 through December 31, 2014. (Claim #s [REDACTED] [\$5213]; [REDACTED] [\$3033]; [REDACTED] [\$2842] and [REDACTED] [\$3772].)
3. The reason for the overissuance alleged here is that the agency received an anonymous tip that informed agency that that Petitioner's girlfriend (hereinafter [REDACTED]) was living with Petitioner and his wife but that was not reported at any time during the period involved here and [REDACTED]'s income was not counted when determining FoodShare eligibility and, if eligible, allotment levels for Petitioner's household.
4. The agency found that there is a complete overpayment for the period from January 2011 through December 2014. It did not actually compute eligibility or allotment level, if eligible. Rather, household composition was changed to reflect "0" as the household size, rendering the household completely ineligible for any FoodShare in the period involved.
5. The agency based its conclusion that [REDACTED] lived with Petitioner and his wife during the time involved here on the following:
 - [REDACTED] owns the property at the above captioned address. Again, this is the residence of Petitioner and his wife.
 - [REDACTED] has renewed her DL and vehicle plates during the time relevant here and used the above address.
 - Petitioner told the agency that [REDACTED] does visit the above address daily but does not sleep there.
 - Petitioner and his wife //both// provided statements that [REDACTED] did not live with them from October 2012 forward.
 - The above address is the address used by the local child support agency for [REDACTED].

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*. The overpayment alleged here is a client error.

Finally, 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. The standard is preponderance. 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.

Here the agency contends that Petitioner and spouse did not accurately report household composition and income by failing to include [REDACTED] in the home. With [REDACTED] included the agency contends that this is a complete overpayment for all months. Petitioner and his spouse maintain that [REDACTED] lives with her sister and Petitioner's mother. Petitioner's mother testified as to [REDACTED] living with her. Petitioner and his spouse also

point to a lease that they have with ■■■. That lease is dated January 3, 2014. Finally, Petitioner argues that the entire agency case is based on hearsay.

Petitioner and his spouse had an obligation to accurately report household composition at review and on report forms. Petitioner has children with both the spouse and girlfriend so if they all live together FoodShare relationship rules make this one FoodShare household and all income must be counted. *See generally FSH, Chapter 3.*

I am persuaded that ■■■ does live in the home of Petitioner. I base this on the ■■■'s ownership of the home at the above address, the use of the address with motor vehicle and child support, her daily visits and the failure to provide credible information as to where she lives. Testimony on behalf of Petitioner as to ■■■ not living with him and his wife is self-serving and not credible. The anonymous report is hearsay but the statements of Petitioner and his spouse are not nor a business records such as real estate and motor vehicle. ■■■'s children reside with Petitioner and spouse. ■■■ visits daily. Her interests are intertwined with Petitioner and the children – it is the interest of all of the adults here to avoid this overpayment. I find it hard to believe this extended family unit that seems to be able to see each other on an amicable daily basis is incapable of producing some credible evidence that ■■■ lives elsewhere.

Petitioner's attorney does note, however, that even if I conclude that Petitioner, his spouse and ■■■ are all in the same household that the agency cannot claim a complete overpayment but must use actual income. She is correct. That procedure is defined in Operations Memo 15-11, issued April 6, 2015. Also see Final Decision in Division of Hearings and Appeals case # FOP/162449, issued April 30, 2015.

In brief, an economic support agency is to request actual income information for use in making the overpayment calculation. If that is not, or cannot, be made available after a request by the agency then the agency is to make the redetermination of eligibility and benefit level using the best information available and that may be a wage cross match. Applied here, the agency must request actual wage information for ■■■ if it does not have that information. If that wage information is not provided and cannot be obtained by the agency, then a wage cross match may be used to complete the redetermination of eligibility and, if eligible, the allotment amount. The agency must follow this process here and cease recovery efforts until it has done so.

CONCLUSIONS OF LAW

1. That the preponderance of available evidence does show that Petitioner and his wife did not correctly reported household composition, thus income has not been fully reported for the purpose of determining FoodShare eligibility and, if eligible, allotment levels.
2. That the agency incorrectly determined that Petitioner was overpaid \$15,402.00 for the period from January 1, 2011 through December 31, 2014 via the use of a fictional household size of "0" in the claim computations.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to cease all collection activities on the overpayments that are the subject of this Decision until it has redetermined FoodShare eligibility and allotment levels, if any, using the process described in Operations Memo 15-11, issued April 6, 2015. A new Notification of FoodShare Overissuance must be issued and Petitioner may file a new appeal – only as to the new calculations.

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.

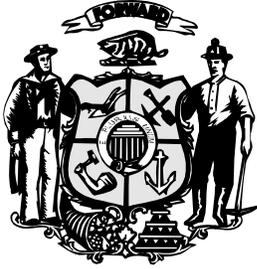
APPEAL TO COURT

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 16th day of June, 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 June 16, 2015.

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

