



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/165982

PRELIMINARY RECITALS

Pursuant to a petition filed May 11, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on June 09, 2015.

The issue for determination is whether the agency has met its burden to show that petitioner was overissued FS.

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: Dean Landvatter

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner received FS from approximately January 19, 2012 through February 26, 2015 for herself and her three children.
3. Petitioner has a child in common with [REDACTED].

4. Petitioner received housing assistance payments from approximately January 1, 2012-February 1, 2015. Exhibit H.
5. By a series of notices dated April 2, 2015, the agency informed petitioner that she was overpaid FS. Claim # [REDACTED] references the period of 3/14/13-8/31/13 in the amount of \$458 due to client error for failing to report accurate shelter expenses. Exhibit A-1. Claim # [REDACTED] references the period of 9/1/13-7/31/14 in the amount of \$1468 due to client error in failing to report accurate household members. Exhibit A-2. Claim # [REDACTED] references the period of 8/28/14-1/31/15 in the amount of \$920 due to client error in failing to report accurate household members. Exhibit A-3. Claim # [REDACTED] references the period of 8/1/14-1/31/15 in the amount of \$1509 due to client error in failing to report accurate household members. Exhibit A-4.

DISCUSSION

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). 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(a)(2). The agency asserts that petitioner was overpaid FS because her boyfriend, now fiancé, was living with her and his income should have been included in the household budget. The agency also seeks an overpayment of FS in the amount of \$458 because her housing assistance had not been reported to the agency, which affected the amount of her FS allotment. The overpayment due to the housing payments is also part of the other claims listed as “failing to report accurate household members” but the amounts are not separable to know how much would be due to each, further discussed below.

1. Was petitioner’s fiancée living with petitioner during the time period in question

Parents and their children must be included in the FS household if they are living together. 7 C.F.R. §273.1(a)(2). All nonexempt income in a household must be budgeted against the FS income limits. 7 C.F.R. §273.9(b).

The agency asserts that if petitioner’s fiancée lived with petitioner, the household would have received more FS than it was entitled to. However, I do not need to address whether income would have affected the FS allotments because I find that the agency has not shown by a preponderance of the credible evidence that he was living with petitioner during the time periods in question.

The agency’s main piece of evidence was a report by John Lucci prepared at the request of the county agency. Ex. I. Of the persons interviewed for this investigation, only one person appeared to testify at hearing. This was the apartment manager where petitioner was living at the time of the alleged overpayment. However, her testimony failed to show that the fiancée was living with her. There was no dispute from the petitioner that he was at her apartment on many occasions. They share a child in common, and she would allow him to use her apartment on the days when he had visitation with his other children. Petitioner acknowledged that because he was there often enough that he had a parking pass and keys to enter. The apartment manager testified that she saw him there several times per week and would see him bringing in groceries. However, her testimony was also somewhat inconsistent, first testifying that information about her statements in the investigative report was wrong, but then testifying to the same information. She also testified that she felt that the apartment management did not have enough proof to say that they were living together, otherwise the management would have notified petitioner that it needed to terminate her lease as the housing is Section 42 housing. If the one person who actually saw this man coming and going, with keys and parking pass, could not state with certainty that he was living there, I do not find there is sufficient evidence to find that he was. Moreover, she acknowledged that she never questioned petitioner about this living arrangement while all of this was going on. And, she

testified that she only began working at this apartment at the end of July 2014. Thus, the overpayment period of 9/1/13-7/31/14 was not supported by her testimony. And finally, she never testified to the times and dates that she did begin seeing him there, and thus I cannot find that she sufficiently proved any time period for this overpayment. The evidence provided equally supports petitioner's version of events, which was that they did have a relationship and he would be at her apartment often. The petitioner also testified that the apartment managers were, to her knowledge, only there from 9AM-5P when the office was open. She also raised some credibility issues with the apartment manager's statements to the investigator as it related to the issuance of the parking pass and keys.

The investigative report also references an interview with a landlord for a property at [REDACTED]. The landlord ([REDACTED]) told Lucci that the fiancée did live at [REDACTED], but that it had been years, and that the fiancée had moved out when [REDACTED] filed foreclosure paperwork on the property. The investigator submitted a Wisconsin Circuit Court Access printout showing that on September 23, 2014 there was a sheriff's deed on the foreclosure action at the Roe Ave. address. Exhibit R. [REDACTED] also allegedly told the investigator that the fiancée had been "gone for two years now." Exhibit I, p.6. This interview took place on January 21, 2015. Thus, his statements prove some unreliability in terms of what he knew about the fiancée and when he moved out. Additionally, [REDACTED] did agree in the report that the fiancée was living there, presumably before the September 23, 2014 action. However, the agency seems to ignore this by establishing an overpayment period prior to that time. [REDACTED]'s hearsay statements do not show me anything but that the fiancée lived on Rowe Ave. at some point.

The petitioner, on the other hand, produced paystubs issued to the fiancée at the Roe Ave. address for paydates of 7/23/13, 7/26/13, 10/11/13, 3/14/14, 4/6/14, 4/18/14, 5/16/14, 5/23/14, 5/30/14, 6/6/14, 6/20/14, 6/27/14, 7/3/14, 8/1/14, and 8/8/14. See Exhibit P-1. She also produced other items mailed to him at that address: a 9/5/13 letter from the Office of Chief of Police, a receipt for his DOT registration in February 2014, Department of Revenue Statements of Account for 10/7/13, 2/10/14, 5/9/14, 6/5/14, IRS Notices from June and August 2014, Department of Children and Families notice regarding child support on 10/13, jury summons from December 2014, Wells Fargo bank statements for the period of 10/1/13-12/31/13, credit reporting alert from 5/29/14, a dental statement from 9/7/14, and vision clinic statements for 11/14 and 12/14. *Id.*

In addition to the Roe Ave. address, petitioner also asserted that the fiancé lived on Olive Street. There is a WE Energies account listed for that address under his name, he made an Energy Assistance application at that address (and assistance was issued), and the Wisconsin Department of Workforce Development and the Wisconsin Department of Revenue knew to mail him at that address. *Id.* Petitioner also provided paystubs to show the fiancée lived there at various times as well. *Id.* The investigator's testimony was that no other address was found for the fiancée except petitioner's address. The investigator interviewed the landlord of Olive Street, but the landlord could not recall the fiancée at that address, according to the report. No lease was secured to show who was on that lease. However, the investigator interviewed the fiancé's then-girlfriend who lived with him at the Olive Street address at least for some periods of time. She appears to have moved from that address in December 2014. Her statements in the report are not corroborated by anything, except that she moved to Grange Ave in January 2015, which is where the fiancée was at, causing his later arrest. See Exhibit Q. There are credibility issues with these two persons' statements and they were not made available for the hearing to provide their testimony under oath and to corroborate their earlier statements.

The investigator interviewed another woman who has a child with the fiancée, but the questioning did not reveal any historical information about her knowledge of where he was living, except that she brought her children to the petitioner's house for visitation with their father on the weekends, and that she had been bringing them to petitioner's address since December 2014. Exhibit I, p.15. This does not show me that the fiancée was living with the petitioner, and in fact, corroborates the petitioner's version of events.

The investigator interviewed the fiancé's sister, who stated that her brother did stay with her from time to time at her apartment where she had been living since August 2014, although she could not recall exact dates. Exhibit I, p.11. Again this supports the petitioner's version of events of where the fiancée was living, which was "here and there" during that timeframe.

The remaining documents the agency seeks to use as corroboration that he lived with petitioner include DOT records, court records, and such. See Exhibits J-R. However, those records note petitioner's address as hers, but the effective dates for those addresses occur on or after September 2014, which again, corroborates petitioner's version of the events that she was allowing him to use her address for mailing purposes for his unemployment compensation. The one exception is Exhibit J, which is a DOT printout for the fiancé's vehicle which has an Update date of April 18, 2014. However, the petitioner also provided DOT information showing that in April 2014 his registration renewal was paid for using the Olive Street address. See Exhibit P-1.

And, clearly there are deficiencies in the investigative report that petitioner raised; spelling errors, timelines, and the like. However, what strikes me most is the conclusion the investigator writes saying, "These findings are based on interviews that gave proof [REDACTED] did reside with [REDACTED] at [REDACTED] as well as interviews conducted that proved he didn't reside with [REDACTED] or [REDACTED] at other addresses stated by [REDACTED]" *Id.* at p. 14. If the investigator wants me to believe his findings based on those interviews, then how do I discount his notes from [REDACTED] who stated the fiancée *was* living at Roe Ave? How do I discount the statements given by [REDACTED] who agreed that he was there at least some of the time, and on Olive St. for some time as well?

The investigator also noted that he saw the fiancé's car in the petitioner's parking lot on December 9, 15 and 22, and 29, 2014. The time of day is noted as 1:40 PM, 8:10AM, 9 AM and 9:45 AM, respectively. Nothing to report how long the car was there or if it had been there overnight. And, I note that petitioner raised the issue that he worked third shift. This investigation only shows me his car was there on 3 occasions. The first occasion on December 9, the investigator actually viewed the fiancée getting items in his car. Curiously, he did not question the fiancée then, and would not question the fiancée after *he* called the investigator to attempt a discussion about the investigation. Exhibit I, p.11. Neither did the investigator contact [REDACTED] who was, according to [REDACTED], living with the fiancée at the Roe Ave. address.

For administrative hearings, the standard of proof is preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence of correct action. Petitioner rebutted the agency's case with documents and testimony that she allowed him to use her address for mailing purposes after he lost his job in August 2014, that he was homeless, essentially bouncing between various places, that he needed her stable mailing address, and they agreed they updated the address for that purpose. They did not dispute that he was there from time to time, as they had a relationship and a child in common. However, I cannot conclude he was residing there.

Based on the evidence presented, I cannot conclude that the agency has not met its burden of proof in establishing that petitioner's fiancé lived with her during the overpayment period and that an overpayment exists on that issue. Thus, I will turn to whether or not petitioner was overpaid FS due to failing to report her housing assistance.

2. Was petitioner overpaid FS due to failing to report her housing assistance.

As stated above, the federal FS regulations provide that the agency 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). The agency claims that petitioner failed to report her housing assistance, thereby allowing her a greater shelter deduction, and a greater FS allotment.

The agency's *FS Handbook* does state that housing assistance is to be disregarded as income, but also to only include as a rent expense what the household owes to the landlord after the HUD payments. See *FS Handbook* §4.3.4.3, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. Thus, the HUD payments should not have been included as part of her total rent and shelter deduction. What I cannot determine is if this is client or agency error. The agency asserted at hearing that prior to March 2013 petitioner was reporting her rental obligation correctly, without the addition of the HUD payments. However, no proof of that prior reporting was produced at hearing. Petitioner argued that she was never asked about HUD payments and that the agency was only accepting her proof of rental obligation in the form of her lease, which showed the total amount of rent due without the HUD payments deducted.

The agency is obligated to verify certain expenses.

Verify those expenses that are required to be verified or those that are deemed questionable at application or when a change in the expense is reported. At review ensure that there is up-to-date documentation in the file to support current CWW  entries.

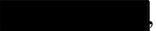
See *FS Handbook* §1.2.4.5; 7 CFR 273.2(f)(3). Further, the *FS Handbook* states:

Shelter and utility expenses are not required to be verified in order for the expense to be used in the FoodShare benefit calculation, unless the applicant or member's statement is deemed questionable. Examples of applicant/member statements that may be considered questionable include:

- Claimed shelter or dependent care expenses exceed monthly income,
- Applicant or member receives housing subsidy but reported the market rent amount, **and**
- Reported amount seems unreasonably high compared to market rates.

See *FS Handbook* §1.2.4.7.

The agency has the burden to show that this overpayment occurred and that it was due to client error. It did not show it was due to client error at hearing. However, if the agency's version is correct - that she had been reporting it correctly prior to March 2013, then at her renewal in March, the newly reported rent at the same address should have alerted the agency to a questionable expense that it should have verified. Accordingly, I find that an overpayment exists, but it is due to agency error. The Order below reflects that this should be changed. The only overpayment I can verify however, is the first claim, #  for the period of 3/14/13-8/31/13 in the amount of \$458, as this only relates to the housing payment issue. Exhibit A-1. I cannot separate out or recalculate the overpayments for those later time periods for the shelter/HUD payment issue.

Based on all of the foregoing, I will direct rescission of the other overpayments (Claim # , Claim # , and Claim # ) because the agency did not meet its burden on the "failing to report accurate household members" issue. However, the agency may try to recover any overpayment

for these months in the future, if the agency issues a new Notification of FS Overissuance and correct worksheet to the petitioner for this time period based on the HUD payment/shelter expense issue.

The petitioner is reminded here that she can arrange to make repayments on Claim # [REDACTED], which can usually be arranged with the Public Assistance Collection Unit (PACU). I understand that the PACU attempts to make those payments affordable and that repayments can also be made by having a percentage of any current FS recouped instead of making outright cash payments.

CONCLUSIONS OF LAW

1. The agency has not met its burden of proof to establish an overpayment of FS against the petitioner in FS overpayment Claim # [REDACTED], Claim # [REDACTED], and Claim # [REDACTED].
2. The agency has established an overpayment of FS for the period of 3/14/13-8/31/13 in the amount of \$458, Claim # [REDACTED].
3. Claim # [REDACTED] was due to agency error.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with instructions to rescind the FS overissuance Claim # [REDACTED], Claim # [REDACTED], and Claim # [REDACTED] and to cease all collection or recovery activities based upon the claims, had such collections begun. The agency shall also reclassify Claim # [REDACTED] as being due to agency error. In all other respects, the petition for review herein is dismissed. These actions shall be completed within 10 days of the date of this Decision.

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 26th day of June, 2015

\sKelly Cochrane
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 26, 2015.

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