



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FOP/166144

PRELIMINARY RECITALS

Pursuant to a petition filed May 18, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Polk County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on June 15, 2015, at Balsam Lake, Wisconsin.

The issue for determination is whether the county agency may recover an alleged overpayment of FoodShare.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # Redact) is a resident of Polk County.
2. The county agency notified the petitioner on June 4, 2015, that it would attempt to recover \$717 in FoodShare the petitioner received from January 14, 2015, through May 31, 2015, because of its

own error in calculating her benefits. This notice amended a previous notice sent to her on April 24, 2015.

3. The county agency has not submitted any worksheet or other detailed evidence demonstrating how it determined the petitioner's overpayment.

DISCUSSION

FoodShare agencies must "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). This regulation requires the agency to recover all overpayments, regardless of whose error caused the overpayment. The county agency contends that the petitioner received \$717 more in FoodShare than she was entitled to from January 14, 2015, through May 31, 2015, because it continued to give her credit for paying child support after she reported that she no longer did.

The county agency initially notified the petitioner of the alleged overpayment on April 24, 2015, but it amended its claim on June 4, 2015. It submitted no case summary and only two exhibits, a January 22, 2015, notice indicating the level of her benefits and a June 4, 2015, overpayment notice. The overpayment notice indicates how much it determined the overpayment was each month but contains no information such as income and deductions about how that overpayment was actually calculated.

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. By seeking to recover the petitioner's benefits, the agency is the moving party. The Department acknowledged the principle laid down in *Hanson* in *Final Decision ATI-40/87198* where Deputy Secretary Richard Lorang ruled on August 17, 1995, that in any fair hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case.

The agency's error undoubtedly allowed the petitioner to receive more FoodShare than she was entitled to. But without a worksheet specifying her income, her housing costs and other allowable deductions, household's size, I cannot tell whether it accurately determined her overpayment. Sometimes when an agency provides inadequate evidence, it still presents enough evidence to determine a range in which the overpayment might fall. In these instances, the Division of Hearings and Appeals can allow an overpayment that falls at the bottom of the possible range because that is what the agency has proved. But in this matter the agency did not even present enough evidence to determine a possible range of overpayments. This means that the determination of any particular overpayment amount depends upon pure speculation. Because speculation is not a proper basis for a decision, I must overturn the agency's finding against the petitioner.

CONCLUSIONS OF LAW

The county agency has not presented a prima facie case establishing the amount of the alleged FoodShare overpayment of FoodShare to the petitioner.

THEREFORE, it is

ORDERED

That this matter is remanded to county agency with instructions that within 10 days of the date of this decision it end its attempts to recover the overpayment of FoodShare benefits allegedly made to the petitioner from January 14, 2015, through May 31, 2015.

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 2nd day of July, 2015

\sMichael D. O'Brien
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 July 2, 2015.

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