



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/166375

PRELIMINARY RECITALS

Pursuant to a petition filed May 28, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was commenced on July 9, 2015 but had to be adjourned as Petitioner had not received the exhibits. The hearing resumed on August 6, 2015 via telephone but Petitioner did not appear but was instead represented by his girlfriend (JW) whose hearing was held with that of Petitioner. The record was held open for a submission of documents by JW. She submitted documents as described in the Findings below.

The issue for determination is whether Petitioner was overissued FoodShare benefits because he was living in the home with his girlfriend and a child in common but his income was not reported and counted for FoodShare eligibility and allotment purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Dean Landvatter
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Kenosha County.
2. Petitioner was sent 2 notices of FoodShare overpayment notice, both dated April 24, 2015, that informed him that he had been overpaid FoodShare benefits as follows:

- 10/01/11 - 09/30/12 \$8694.00 (Claim# [REDACTED])
  - 10/01/12 - 09/30/13 \$8400.00 (Claim # [REDACTED])
3. The reason for the alleged overissuance was that the mother (JW) of Petitioner's child reported that he lived in her home but did not report any income for him.
  4. The agency based its decision that Petitioner was living in the home with his child was based on the following reports filed by JW:
    - A February 21, 2011 online renewal,
    - A second February 21, 2011 online renewal,
    - A six-month report form signed on September 19, 2011 is not clear but worker confirmed both in house from child care,
    - An August 30, 2012 online renewal,
    - A six-month report form signed September 24, 2012,
    - A six-month report form signed February 24, 2013 and
    - An online renewal application dated August 22, 2013.
  5. JPC's income was not an issue at the hearing nor was the calculation of the amount of the overpayment.
  6. The record was held open to give JW an opportunity to submit evidence concerning where JPC was residing during the time alleged here. She submitted:
    - A lease for the above address for the period of 5/11 through 4/12, dated April 4, 2011, for the above address which indicates that JW is the lessee and does not contain the name of JPC;
    - A 2014 [REDACTED] indicating that JPC had paid mortgage interest on a property in [REDACTED], Illinois;
    - A 2012 property tax bill for the [REDACTED] property, which indicates that JPC and CMC by the taxpayers of record;
    - A real estate tax bill for the year 2013 which indicates that JPC and CMC are the taxpayers of record for the [REDACTED] property;
    - A 2015 real estate tax bill which indicates that JPC is the sole taxpayer of record for the [REDACTED] property;
    - An August 1, 2015 utility bill for the [REDACTED] property showing that the account is in the name of JPC;
    - A mortgage statement from February of 2015 indicating that JPC is the payer of a mortgage for the [REDACTED] property;
    - An August 2015 utility bill for the above address showing that the account is in the name of JW and
    - A July 2015 utility bill for the above address showing that the account is in the name of JW.

### DISCUSSION

The Federal Regulation concerning FoodShare overpayments requires the 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, Appendix §7.3.2*. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 *CFR § 273.18(b)*; see also *FoodShare Wisconsin Handbook, App. 7.3.1.9*. Overpayments due to “client error” may be recovered for up to six years after discovery. *FoodShare Wisconsin Handbook, §7.3.2.1*.

Additionally, Federal Regulations provide, in relevant part, as follows:

- (a) Establishing claims against households.** All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .  
7 *CFR § 273.18*; also see *FoodShare Wisconsin Handbook (FSH), § 7.3.1.1*.

Finally, also relevant here is the following as to who must be included in a FoodShare household:

### **3.3.1.3 Relationship Rules**

7 *CFR 273.1(b)(1)*

The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses and spouses,
2. Biological (unless no longer a parent because of adoption), adoptive, or step-parents and their children under the age of 22, and
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

...  
*FSH, §3.3.1.3*.

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.

That income for JPC was not reported is not contested here; rather, Petitioner maintains that he was not living with during the period involved here. The agency bases the contention that Petitioner and JPC were residing together on the 8 filings by JW in which she reports JPC in the home. It does establish a prima facie case for the proposition that JW and Petitioner were residing together.

JW testified that JPC lives in [REDACTED] but that he occasionally stays with her especially on weekends. In support of that testimony she submitted the documents noted at Finding # 6 post hearing.

I am sustaining the overpayment. JW did report JPC in the home on multiple occasions. A question on the renewal forms ask if he is a Wisconsin resident. She answered ‘yes. There is also a question – ‘does he intend to reside in Wisconsin?’. She answered ‘yes’.

Her own documents are inconclusive. That he is not on lease does not mean that he was not there. The real estate records from [REDACTED] suggest that JPC owned the property there with another male with the same last name during the period involved here. Thus that individual might well have been living at the [REDACTED] property. Utility bills are from 2015 rather than the time period of the overpayment.

The preponderance of the evidence, here the documentary record, does show that JW and JPC were residing together as alleged. His income was not reported.

**CONCLUSIONS OF LAW**

That the evidence offered by the agency is sufficient to demonstrate that Petitioner was overpaid FoodShare benefits as alleged as he was a member of JW's FoodShare household and income was not reported for him as required.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

**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 24th day of August, 2015

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\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 August 24, 2015.

Kenosha County Human Service Department  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability