



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/166571

PRELIMINARY RECITALS

Pursuant to a petition filed June 09, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Calumet County Department of Human Services (the agency) in regard to FoodShare benefits (FS), a hearing was held on July 07, 2015, at Chilton, Wisconsin.

This case is related to appeal FOP/166500 filed by Petitioner's estranged spouse, [REDACTED]. The overpayment claims against [REDACTED] were determined to be void, because the agency failed to give him timely and adequate notice of the overpayment claims.

NOTE: The record was held open to allow the agency to submit additional documentation concerning the Petitioner's applications and case comments.

The agency submitted a set of case comments, an application dated July 28, 2014, an application dated January 24, 2015 and a Notice of Proof Needed dated March 4, 2015. They have been marked as Exhibits 17, 18, 19 and 20, respectively.

The issue for determination is whether the agency correctly determined that the Petitioner was overpaid 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: Lynn Brenner, Economic Support Manager
Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:
 Mayumi M. Ishii
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Calumet County.
2. On July 28, 2014, the Petitioner completed an on-line ACCESS renewal, reporting four people in the household: herself and three children, [REDACTED], [REDACTED], and [REDACTED]. The Petitioner reported living at an address on [REDACTED]. That application advised the Petitioner about the need to report changes in income that exceeded 130% of the Federal Poverty Level. Petitioner electronically signed the renewal, indicating that the information she provided was correct and complete and that she understood the penalties for providing false information. (Exhibit 18)
3. Petitioner's daughter, [REDACTED] came to live with the Petitioner for the entire summer in 2014. [REDACTED] was then expected to remain with the Petitioner due to issues that [REDACTED] had with her father. (Testimony of Petitioner)
4. Petitioner added [REDACTED] to her FoodShare case when it was decided [REDACTED] should remain with her, sometime in early September 2014. (Testimony of Petitioner)
5. [REDACTED] ended up returning to her father, due to behavior problem, on or about the last weekend in September (September 26 /27 / 28). (Testimony of Petitioner; Exhibit 4)
6. On January 24, 2015, the Petitioner completed an ACCESS renewal, reporting five people in the household: herself and four children, [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The Petitioner reported living at the address on [REDACTED]. That application advised the Petitioner about the need to report changes in income that exceeded 130% of the Federal Poverty Level. The Petitioner electronically signed the renewal, indicating that the information she provided was correct and complete and that she understood the penalties for providing false information. (Exhibit 18)
7. On May 29, 2015, the agency sent the Petitioner an unsigned Notice of FoodShare Overissuance, indicating the Petitioner was overissued FoodShare benefits, in the amount of \$5,483.00, for the period of March 1, 2014 through March 31, 2015. No overpayment worksheet was included in this notice. (Exhibit 14)
8. On June 1, 2015, the agency sent the Petitioner an automated FoodShare Overpayment Notice, claim # [REDACTED], indicating that she was overpaid benefits in the amount of \$5,078.00, for the period of March 1, 2014 through February 28, 2015. This notice included the overpayment worksheets. (Exhibit 10)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 9, 2015. (Exhibit 1)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an over-issuance of FoodShare. *7 C.F.R. §273.18(a)(2)* An over-issuance or overpayment occurs when a household receives more FoodShare benefits than it was entitled to receive. *7 C.F.R. §273.18(a)* The overpayment may be caused by 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 C.F.R. § 273.18(b)*, emphasis added; see also *FoodShare Wisconsin Handbook, (FSH) § 7.3.2.1*. As such, it does not matter whose error caused the overpayment; it must be recouped.

In a hearing concerning the propriety of an overpayment, the agency bears the initial burden to prove, by a preponderance of the credible evidence, that its overpayment determination is correct.

The claim being made by the agency is a bit confusing because the manual notice sent to the Petitioner on May 29, 2015, shows a different amount and a different overpayment period than the automated notice issued on June 1, 2015; \$5483.00 versus \$5078.00 and 3/1/14 to 3/31/15 versus 3/1/15 to 2/28/15. The agency has provided no explanation for this discrepancy.

Given that no overpayment worksheet was attached to the May 29, 2015 notice and given that the agency has not provided any proof of what the household income was, the agency has not met its burden to prove the \$5483.00 calculation is correct. As such, the agency will have to rescind that notice.

This decision will, therefore, address the June 1, 2015 overpayment notice, which did have an overpayment worksheet attached to it.

It is the agency's position that the Petitioner was overpaid FoodShare benefits between March 1, 2014 and February 28, 2015, because she lived at the [REDACTED] address with her sometimes estranged husband, [REDACTED], but failed to report [REDACTED] in the household and failed to report his income to the agency.

In determining eligibility for FoodShare benefits, the agency must budget all income of the FoodShare household, including all earned and unearned income. 7 CFR § 273.9(b); FSH § 4.3.1 As such, the agency must determine who makes up the applicant's household. A household is defined as all people living in or temporarily absent from the same residence. 7 C.F.R. § 273.1(a); FSH § 3.3.1.1

Petitioner asserts that she was living in a mobile home in Cleveland, Wisconsin from March 1, 2014 through October 1, 2014. Petitioner further states that [REDACTED] was not living with her.

Petitioner provided Exhibit 5, which is a print out of parking fees and rent fees from [REDACTED] [REDACTED], showing that Petitioner was paying rent for her mobile home between March 2014 and March 2015. This is not conclusive proof of Petitioner's residence, since she continued to pay fees after the date she claims to have moved out of the trailer. However, statements made during the hearing by [REDACTED], an investigator at [REDACTED], corroborate the Petitioner's claim that she was living in Cleveland, Wisconsin as she claims. Indeed, he indicated he spoke to individuals that placed the Petitioner at her mobile home in Cleveland, Wisconsin, through at least September 2014.

Thus, it is found that the Petitioner was actually living in Cleveland, Wisconsin from March 1, 2014, until October 1, 2014.

The next question, then, is whether [REDACTED] was living with Petitioner in Cleveland, Wisconsin. In order to prove [REDACTED] was with the Petitioner at the Cleveland residence, the agency relied upon the verbal hearsay statements of various people who live near the Petitioner's mobile home, one of whom would not provide a last name. There is nothing about their hearsay statements that make the statements inherently reliable. Moreover, the Wisconsin Supreme Court in *Gehin v. Wisconsin Group Insurance Board*, 278 Wis. 2d 111, 692 N.W.2d 572, 2005 WI 16, held that in administrative hearings, a finding of fact cannot be based solely upon hearsay evidence when it is controverted by in-person testimony. See Also *Michelle V. Housing Authority of the City of Milwaukee*, 779 N.W.2d 185, 2010 WI App 14

The agency also relied upon a letter dated February 18, 2014, from a [REDACTED], who identified himself as the park manager of the trailer park where [REDACTED] lived. However, this is again hearsay and it is multiple layers of hearsay, because [REDACTED] indicates that he is basing the information he provided on what other people told him, not his personal knowledge.

It should be noted that the report from [REDACTED] fails to indicate how these individuals identified the Petitioner and [REDACTED]. Did the investigator only mention the Petitioner and [REDACTED] by name to the interviewees or were the interviewees shown photographs? If the interviewees were shown photographs, what photographs were used?

Based upon all of the foregoing, it is found that the verbal hearsay statements of the neighbors and the hearsay within hearsay contained in the letter from [REDACTED] are not sufficient to prove [REDACTED] was living with the Petitioner.

Therefore, it is found that the agency has not met its burden to prove [REDACTED] was living with the Petitioner between March 1, 2014 and October 1, 2014.

The Petitioner concedes that on October 1, 2014, she moved to [REDACTED] and that it is a duplex owned by [REDACTED]. The Petitioner also concedes that as of April 1, 2015, the Petitioner moved in with her, because she was having financial difficulties caused, in part, by issues with her FoodShare benefits, and a previously imposed overpayment.

However, the Petitioner disputes the agency's assertion that [REDACTED] lived with her between October 1, 2014 and March 31, 2015. The Petitioner and [REDACTED] testified that during this time the Petitioner lived with an individual named [REDACTED], but spent the night with her two or three nights a week, because they were trying to reconcile. To corroborate this claim, the Petitioner produced a letter from [REDACTED] indicating that [REDACTED] lived with him from October 2014 and March 2015, but that he was gone from time to time. (See Exhibit 7)

The Petitioner's claims are iffy and this is a closer case than one might think, but the agency did not present testimony from anyone who actually had first-hand knowledge about [REDACTED]'s living arrangements.

In order to prove [REDACTED] was living with the Petitioner between October 1, 2014 and March 31, 2015, the agency relied upon the following:

1. Hearsay statements made to [REDACTED] from neighbors of the [REDACTED] duplex:

As discussed above, the hearsay information from various interviewees does not bear a sufficient indicia of reliability and cannot be relied upon when controverted by in-person testimony. As such, it does not prove where [REDACTED] was living.

2. A My Vote Wisconsin print out:

The print out shows [REDACTED] living at [REDACTED] and that he voted in November 2014. However, it does not show when Petitioner's address / voter profile was last updated. As such, the print out does not support the agency's assertion that [REDACTED] was living at [REDACTED] from October 1, 2014 through February 28, 2015.

3. CCAP printout for case [REDACTED]

[REDACTED]'s address is listed as the [REDACTED] address, but the date on which the address was updated is listed as April 5, 2014, which is outside the time period in question. As such, it does not show where [REDACTED] was living between October 1, 2014 and March 31, 2015.

4. Tax Billing and Real Estate Assessment

It is undisputed that [REDACTED] owns the duplex at [REDACTED]. It is not inconceivable, that [REDACTED] would rent out both units and live elsewhere. As such, it does not prove where [REDACTED] was living between October 1, 2014 and March 31, 2015.

5. DMV records

This is an abstract regarding vehicle registration and lists [REDACTED]'s "primary" address as [REDACTED]. However, it is unclear when this information was updated. This, like all the other exhibits, shows that [REDACTED] uses his duplex's address, but it is not conclusive proof of where [REDACTED] was living between October 1, 2014 and March 31, 2015.

(See Exhibit 15)

Based upon the foregoing, it is found that the agency has not met its burden to prove, by preponderance of the credible evidence, that the Petitioner and [REDACTED] were living together from October 1, 2014 through February 28, 2015. As such, it cannot prove an overpayment of benefits occurred during this time.

It should be noted that even if the agency had shown that Petitioner and [REDACTED] were living together, that it would not have been able to establish the accuracy of the overpayment calculation, because it did not provide any documentation to prove what [REDACTED]'s income was during the time in question.

Given that in the July 2014 renewal, the Petitioner reported living at the [REDACTED] address, when she was actually living in Cleveland Wisconsin in her trailer home, the agency might want to see if the Petitioner provided correct information about her shelter expenses and whether that caused an overpayment.

As an additional note to the parties, it is clear from the Petitioner's testimony, Exhibit 4 and Exhibit 18, that the Petitioner provided false information concerning her household composition when she completed her January 2015 renewal. In that renewal, the Petitioner continued to claim that her daughter [REDACTED] was in her household, even though [REDACTED] went back to Michigan with her father at the end of September 2014. If Petitioner received FoodShare benefits for [REDACTED] as a result of that January 2015 renewal, then an overpayment of benefits likely occurred. However, the agency did not provide a copy of the FoodStamp Issuance History Disbursement print-out, nor did it provide a copy of the Notice of Decision issued after the January 2015 renewal, showing what benefits the Petitioner received and for whom. As such, it is not clear from this record whether an overpayment occurred. The agency will have to look into this, if it sees fit to do so.

CONCLUSIONS OF LAW

The agency has not met its burden to prove the Petitioner was overpaid benefits between March 1, 2014 through March 31, 2014, as asserted in the May 29, 2015 Notice of FoodShare Overissuance and the June 1, 2015 FoodShare Overpayment Notice, claim # [REDACTED].

THEREFORE, it is

ORDERED

That the agency rescind the May 29, 2014 Notice of FoodShare Overissuance and that it also rescind claim the June 1, 2015 FoodShare Overpayment Notice - Claim Number [REDACTED]. The agency shall take all steps necessary to complete these tasks within ten days 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 9th day of July, 2015.

\sMayumi M. Ishii
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 9, 2015.

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