



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/166937

PRELIMINARY RECITALS

Pursuant to a petition filed June 29, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Office of Inspector General (OIG) in regard to FoodShare benefits (FS), a telephonic hearing was held on July 16, 2015. The record was held open post-hearing to allow the petitioner time to submit additional documents, which were received, and to allow the agency an opportunity to respond to those documents, which occurred.

The issue for determination is whether the agency has established an overpayment of FS against the petitioner.

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: Kristine DeBlare, PARIS Agent
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner's FS were used in the State of California from December 15, 2013- April 2, 2014, and from April 30, 2014-February 9, 2015. See Exhibits 6 and 22.
3. On February 20, 2015 the agency became aware of petitioner's out of state FS usage. It subsequently requested documentation from petitioner as to her residency.
4. On June 25, 2015 the agency issued a notice to petitioner stating that it found an overpayment of FS against her for the period of 5/1/14-2/28/15 in the amount of \$4869 (claim # [REDACTED]) due to failure to report move out of state/change of residence due to client error.

DISCUSSION

Federal regulations require state agencies to establish a claim against any household that has received more FS benefits than it is entitled to receive. 7 CFR § 273.18(a). This regulation requires the agency to recover all FS overpayments regardless of whose error caused the overpayment. The amount of a FS allotment depends upon net income and the number of persons in the household. The agency contends that the petitioner received \$4869 more FoodShare than she was entitled to from 5/1/14-2/28/15, because she did not live in Wisconsin and was living in California.

Wisconsin policy requires that "[a]pplicants for FoodShare must reside in, or be temporarily absent from Wisconsin" and give the following guidelines for determining residency:

1. Residence does not mean the legal place of residence or principal home.
2. Residence does not mean the intent to live permanently in Wisconsin or the county.
3. A person who is in Wisconsin or in a county solely for vacation purposes is not a resident of the county.
4. Do not require someone to reside in Wisconsin or within a county for any minimum length of time.
5. Residence does not mean a permanent dwelling or a fixed mailing address.

FoodShare Wisconsin Handbook, §3.2.1.

The agency's case largely rests upon her out of state FS usage, and there was no dispute that it occurred. The agency also relies on a faxed document it received from the petitioner which indicates a California fax number. See Exhibit 4. The agency also relies on some conflicting documentation about her lease in Milwaukee that it received from the petitioner and her landlord. See Exhibit 5 vs. Exhibit 16. The agency also found petitioner's explanation of the out of state FS usage not credible.

The petitioner admits her FS were used in California because she had her mother buy her food there and ship it to her in Milwaukee as she had been injured and had no transportation to shop for herself here in Wisconsin, with the exception of April 2014 when a family member was in town and helped her out to shop. She provided her lease for her Milwaukee residence (Exhibit 5), a copy of a WE Energies bill (Exhibit 4) and one relevant shipping receipt showing a mailing from California to Milwaukee in November 2014. See Exhibit 9. These are the types of acceptable verifications for residence under the *FoodShare Wisconsin Handbook* §1.2.6.1.

While the agency's findings certainly raise a reasonable suspicion, a suspicion, regardless of how well founded, is not proof. The agency's case is contradicted by the petitioner's sworn testimony as well as the few documents she did provide. Under these circumstances, my skepticism amounts to speculation, which does not provide a sufficient legal basis to find that she lived in California. While some of the documents she provided may give cause to question or terminate her FS for failure to verify (an issue not before me on this appeal), this does not amount to proof that she was not living in Wisconsin and subject

her to an FS overpayment. Because there is insufficient evidence to contradict the petitioner's sworn testimony concerning her living arrangements, the agency's claim fails.

This decision does not mean the agency cannot bring an overpayment case again if it gets better evidence. Petitioner indicated at hearing her agreement to sign releases to get the information the agency is requesting. The petitioner has agreed to provide what she can. Information about her W-2 participation during the relevant timeframes may be helpful to clarify the evidence as well. I add the following:

The applicant has primary responsibility for providing required verification and for resolving any discrepancies or questionable information. The local agency must assist the applicant in obtaining this verification providing the applicant has not refused to cooperate with the application process.

If all attempts to verify the information have been unsuccessful because the person or organization providing the information has failed to cooperate with the household and agency (for example, by charging a fee or refusing to complete a verification form), and all other sources of verification are unavailable, determine an amount to be used for certification purposes based on the best available information. Clearly document the attempts to obtain verification and the reasoning for the estimate that is used. Best available information may include; customer statement, oral or written.

FoodShare Wisconsin Handbook, §1.2.1.3; 7 CFR 273.2(f)(5).

CONCLUSIONS OF LAW

The agency has not proven by the preponderance of the evidence that the petitioner received more FoodShare benefits than she was entitled to for the period of 5/1/14-2/28/15 (claim # [REDACTED]), because it has not established that she lived outside of Wisconsin.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions that within 10 days of the date of this decision it rescind FS overpayment claim # [REDACTED] and cease any collection efforts had they begun.

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 ████████ ee,
Wisconsin, this 11th day of August, 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 August 11, 2015.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability