



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/167075

PRELIMINARY RECITALS

Pursuant to a petition filed July 07, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Manitowoc County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on August 18, 2015, at Manitowoc, Wisconsin.

NOTE: The record was held open, without objection from Petitioner, until the end of the day to allow the agency to supplement the record. The agency provided the following:

- Exhibit 4 - an e-mail from a [redacted] to [redacted] dated May 22, 2015, asking Ms. [redacted] to investigate the Petitioner's case.
Exhibit 5- Case comments from May 19, 2015 to August 12, 2015, showing that [redacted] Fiscal Staff reported the Petitioner was living in a CBRF
Exhibit 6 - Undated electronic signature page
Exhibit 7 - Page 12 of the Eligibility and Benefits booklet

The issue for determination is whether the Manitowoc County Department of Human Services (the agency) correctly determined that the Petitioner was overpaid FoodShare benefits in the amount of \$1,401.00, for the period of September 1, 2014 through June 30, 2015.

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: Deb Williquette, Economic Support Supervisor
Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

## ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. In July 2014, the Petitioner moved into a residence that the Wisconsin Department of Health Services certified as a Community-Based Residential Facility (CBRF).<sup>1</sup> He lived there throughout the overpayment period, until August 2015. (Testimony of Petitioner; Testimony of Ms. Williquette)
3. Petitioner is disabled and received Social Security Disability Income during the time in question. (Testimony of Petitioner; Testimony of Ms. Williquette)
4. The CBRF provided all of Petitioner's meals.<sup>2</sup> (Testimony of Petitioner)
5. Petitioner used his FoodShare benefits to supplement his nutrition by purchasing snacks and sandwiches outside the CBRF. (Testimony of Petitioner)
6. On May 27, 2015, the agency sent the Petitioner a FoodShare Overpayment Notice, claim # [REDACTED], indicating that he had been overpaid FoodShare benefits in the amount of \$1,401.00 for the period of September 1, 2014 through June 30, 2015. (Exhibit 2)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 7, 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 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 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.

The agency contends that the Petitioner caused an overpayment, because he failed to report that he moved into a Community-Based Residential Facility (CBRF). The agency further contends that the Petitioner was not eligible for FoodShare benefits during the time in question, because the CBRF provided all his meals.

7 C.F.R. §273.1(b)(7)(vi) states that residents of an institution are not eligible to participate in a FoodShare program. See also FSH §3.2.1.4 "Individuals must be considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services." 7 C.F.R. §273.1(b)(7)(vi); FSH §3.2.1.4

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<sup>1</sup> See also the Public Directory published by the Department of Health Services, Division of Quality Assurance, which can be viewed on line at:

<https://www.dhs.wisconsin.gov/sites/default/files/legacy/bqaconsumer/AssistedLiving/cbrfcty/cbrfmani.pdf>

<sup>2</sup> Wis. Admin. Code §DHS 83.41(2)(a) and (b) requires a CBRF to provide residents with three meals a day that meet the Dietary Guidelines for Americans.

However, individuals who are disabled or blind and residents of group living arrangements are exempt from this requirement and are not considered residents of an institution, even if the group home pays for more than 50% of their meals. 7 C.F.R. §273.1(b)(7)(vi)(C). “Individuals listed in paragraphs (b)(7)(vi)(A) [sic] through (b)(7)(vi)(E) [sic], **can participate in the Program** and must be treated as separate households from the others with whom they reside, subject to the mandatory household combination requirements of paragraph (b)(1) of this section...” 7 C.F.R. §273.1(b)(7)(vi), *emphasis added*.

See also FSH §3.2.1.4, “Some facilities appear to be institutions, but are not. Persons living in the following licensed or authorized facilities may be eligible for FS:...2. Group living arrangements,...”

It might be that the agency is confusing a CBRF with a residential care apartment complex (RCAC).

A CBRF is defined as, “a place where 5 or more unrelated people live together in a community setting. Services provided include room and board, supervision, support services and may include up to 3 hours of nursing care per week.” See <https://www.dhs.wisconsin.gov/regulations/cbrf/introduction.htm>

RCACs are, “Independent apartment units in which the following services are provided: room and board, up to 28 hours per week of supportive care, personal care, and nursing services.” See <https://www.dhs.wisconsin.gov/regulations/rcac/introduction.htm>

According to FSH §3.2.1.5.1, individuals living in an RCAC are not eligible for FoodShare benefits, if the RCAC provides more than 50% of their meals, but the FoodShare manual does not explicitly impose the same restrictions upon individuals residing in a CBRF:

### 3.2.1.5 Group Living Arrangement

A group living arrangement is a public or private nonprofit residential setting serving no more than 16 residents. It must be certified by the appropriate state or local agencies. An example may be a Community Based Residential Facility (CBRF ).

Any blind or disabled (3.8.1) resident of a group living arrangement may be eligible.

The resident may purchase meals from the group living arrangement when FNS  authorizes the facility to accept and redeem FS. ...

*Emphasis Added FSH §3.2.1.5*

This Wisconsin FoodShare policy is aligned with the following Federal SNAP guidelines:

- (f) *Residents of a group living arrangement.* (1) Disabled or blind residents of a group living arrangement (GLA) (as defined in § 271.2 of this chapter) may apply either through use of an authorized representative employed and designated by the group living arrangement or on their own behalf or through an authorized representative of their choice. The GLA must determine if a resident may apply on his or her own behalf based on the resident's physical and mental ability to handle his or her own affairs. Some residents of the GLA may apply on their own behalf while other residents of the same GLA may apply through the GLA's representative. Prior to certifying any residents, the State agency must verify that the GLA is authorized by FNS or is certified by the appropriate agency of the State (as defined in § 271.2 of this chapter) including the agency's determination that the center is a nonprofit organization.

- (i) If the residents apply on their own behalf, the household size must be in accordance with the definition in § 273.1. The State agency must certify these residents using the same provisions that apply to all other households. If FNS disqualifies the GLA as an authorized retail food store, the State agency must suspend its authorized representative status for the same time; but residents applying on their own behalf will still be able to participate if otherwise eligible.
- (ii) If the residents apply through the use of the GLA's authorized representative, their eligibility must be determined as a one-person household....

7 C.F.R. § 273.11(f)

Federal Regulations define “Group Living Arrangement” as follows:

*Group living arrangement* means a public or private nonprofit residential setting that serves no more than sixteen residents that is certified by the appropriate agency or agencies of the State under regulations issued under section 1616(e) of the Social Security Act or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act. **To be eligible for SNAP benefits, a resident of such a group living arrangement must be blind or disabled** as defined in paragraphs (2) through (11) of the definition of “Elderly or disabled member” contained in this section.

*Emphasis added 7 C.F.R. §271.2*

Clearly, the agency incorrectly concluded that disabled individuals living in Group Living Arrangements are ineligible for benefits, when the Group Living Arrangement provides more than 50% of the resident’s meals.

In the case at hand, it is undisputed that the Petitioner is disabled. It is undisputed that the Petitioner was living in a CBRF. The remaining question is whether that CBRF was a Group Living Arrangement, as defined by the federal regulations above.

It is undisputed that the CBRF was certified as such, by the Wisconsin Department of Health Services. It does not appear the CBRF is a public entity, so for the CBRF to qualify as a Group Living Arrangement, it had to be a non-profit residential setting.

The agency bears the burden of proof to show that it correctly assessed the Petitioner with an overpayment, and thus needed to provide evidence of the CBRF’s for-profit status. However, the agency has provided no evidence to show that the organization that owns and operates the CBRF is a for-profit organization. As such, the agency has not met its burden to prove it correctly concluded that Petitioner’s residency at the CBRF disqualified him from receiving FoodShare benefits.

The agency argues that the Petitioner is also ineligible for benefits because his CBRF is not an FNS authorized food vendor. The agency has provided no evidence to prove the CBRF is not an authorized food vendor, but even if the CBRF is not an FNS authorized vendor, that does not disqualify the Petitioner from receiving FoodShare benefits. Under 7 C.F.R. § 273.11(f)(i), “if FNS disqualifies the GLA as an authorized retail food store, the State agency must suspend its authorized representative status for the same time; but residents applying on their own behalf will still be able to participate if otherwise

eligible.” *Emphasis added.* As such, the CBRF’s lack of FNS certification as a food store does not affect the resident’s eligibility for FoodShare benefits.

The agency should note that if it conducts further investigation of the CBRF and finds that it does not meet the definition of a Group Living Arrangement, it may issue to the Petitioner a new overpayment notice, with new appeal rights.

### **CONCLUSIONS OF LAW**

The agency has not met its burden to prove that it correctly determined the Petitioner was overpaid FoodShare benefits in the amount of \$1,401.00, for the period of September 1, 2014 through June 30, 2015.

**THEREFORE, it is**

### **ORDERED**

That the agency rescind FoodShare overpayment claim # [REDACTED]. The agency shall take all administrative steps necessary to complete this task 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 21st day of August, 2015.

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\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 August 21, 2015.

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