



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/167640

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Dane County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on December 2, 2015, by telephone. Hearings set for August 20, September 23, and November 4, 2015 were rescheduled at the parties' requests while waiting for a decision in a concurrent appeal concerning Medical Assistance benefits.

The issue for determination is whether the agency correctly determined an FS overpayment due to not reporting a household member.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Columbia County. The Columbia County economic support agency contracts with the Dane County agency to do investigations and overpayment determinations.

2. By notices dated May 7, 2015, the agency informed petitioner that she was overpaid a total of \$14,263 in FS from July 16, 2012 through March 31, 2015, because she failed to report that her children's father was a household member who was employed during the period, and whose income would have caused the household to be ineligible for FS, claim nos. [REDACTED] and [REDACTED].
3. On the same day the agency also notified petitioner that she was overpaid Medical Assistance (MA) during the same period, for the same reason. Petitioner initially appealed only the MA determination, and a hearing was held with ALJ Wolkstein on July 30, 2015, case no. MOP-166018.
4. Atty. Wolkstein concluded, in a decision dated November 9, 2015, that the father was in the home and that petitioner failed to report him in the home. The MA overpayment due to client error was upheld.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

The federal FS regulations define FS household composition as follows:

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a). FS rules provide further as follows:

The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

- (i) Spouses;
- (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and
- (iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent.

7 C.F.R. §273.1(b)(1); see also FS Handbook, Appendix 3.3.1.2.

As noted, if the father of petitioner's children was living in the household, the household would have been ineligible for FS during the entire period due to his income. It has long been held that if a parent is absent solely for work purposes he remains a household member. In this case the father always used petitioner's address as his mailing address, reported to child support that he lived there, and stayed there often when he was not working (per petitioner's testimony).

The rules for residence and relationships are essentially the same for MA and FS. Therefore, because ALJ Wolkstein concluded that the father should have been a reported household member for MA purposes, his conclusion precludes a different result in the FS situation. I conclude, therefore, that the agency correctly determined an FS overpayment because petitioner erroneously reported that the father was out of the household in July, 2012.

CONCLUSIONS OF LAW

The agency correctly determined an FS overpayment because petitioner erroneously reported that the father of her children was out of the household in July, 2012, and his income would have caused the household to be ineligible for FS from July, 2012 through March, 2015.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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 Madison,
Wisconsin, this 2nd day of December, 2015

\sBrian C. Schneider
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 December 2, 2015.

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