



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/168257

PRELIMINARY RECITALS

Pursuant to a petition filed August 26, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 27, 2015, at Racine, Wisconsin. The record was held open post-hearing for 14 days for the Petitioner to submit additional evidence. No additional evidence was submitted and the record was closed on November 10, 2015.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the total amount of \$6,022.31 for the periods of April 1, 2012 – July 31, 2012, September 1, 2012 – November 30, 2012 and February 1, 2013 – December 31, 2013.

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: Dean Landvatter

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County. Petitioner's girlfriend [REDACTED] has lived at [REDACTED], Racine since approximately 2010. [REDACTED] and the Petitioner have two children in common.
2. On February 27, 2012, the Petitioner submitted an online renewal application for FS benefits. He reported only himself in the household. He reported his address on [REDACTED], Racine. This is the same address as Petitioner's girlfriend [REDACTED].
3. On March 12, 2012, the agency issued a Notice of Decision to the Petitioner informing him that he would receive \$200/month in FS benefits effective April 1, 2012. It informed him that this was based on a household size of one, unemployment compensation of \$301/month and rent of \$400/month. The notice also informed the Petitioner of the requirement to report to the agency by the 10th day of the next month if his gross monthly household income exceeded \$1,180.
4. On March 21, 2012, the agency issued a summary of the Petitioner's renewal to the Petitioner. Petitioner's household size was noted to be one. Petitioner electronically signed the summary.
5. On March 26, 2012, the agency issued a Notice of Decision to the Petitioner at his [REDACTED] address informing him that he would receive \$145/month in FS benefits effective April 1, 2012. It informed him that this was based on a household size of one, unemployment compensation of \$183/week and rent of \$550/month. The notice also informed the Petitioner of the requirement to report to the agency by the 10th day of the next month if his gross monthly household income exceeded \$1,180.
6. On August 3, 2012, the agency generated a summary of the Petitioner's six month renewal. Petitioner reported no changes in household size.
7. On September 18, 2012, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would increase to \$149/month effective October 1, 2012. It informed him that this was based on a household size of one, income from unemployment compensation of \$183/week and rent of \$550/month. It also informed him of the requirement to report to the agency by the 10th day of the next month if his gross monthly household income exceeded \$1,211.
8. On November 13, 2012, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would increase to \$200/month effective December 1, 2012. It informed him that this was based on a household size of one and no household income. It also informed him of the requirement to report to the agency by the 10th day of the next month if his gross monthly household income exceeded \$1,211.
9. On December 10, 2012, the agency generated a summary of the Petitioner's six month renewal. Petitioner reported his girlfriend [REDACTED] and their two children in common as household members. Petitioner reported [REDACTED]'s employment. Petitioner reported that he and [REDACTED] resided together since February, 2012.
10. On December 20, 2012, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would be \$366/month effective January 1, 2013. It informed him that this was based on a household size of four that included [REDACTED] and their two minor children, [REDACTED]'s income of \$522.15/week and mortgage expense of \$714/month. It also informed him of the requirement to report to the agency by the 10th day of the next month if his gross monthly household income exceeded \$2,498.
11. On January 28, 2013, Petitioner reported to the agency that [REDACTED] moved out of the house. The two children remained in his household. The agency removed [REDACTED] from the Petitioner's case.

12. On January 30, 2013, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would increase to \$526/month effective February 1, 2013 based on a household size of three and Petitioner's unemployment compensation of \$138/week. The notice also indicated that [REDACTED] was not included in the household. It also informed the Petitioner of the requirement to report to the agency by the 10th day of the next month if gross household income exceeded \$2,069.
13. On May 26, 2013, the agency generated a summary of the Petitioner's six month renewal. The Petitioner and two children were noted as household members. Petitioner electronically signed the summary.
14. On August 12, 2013, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would decrease to \$498/month effective September 1, 2013. It informed him that this was based on a household size of three and income from unemployment compensation of \$163/week. It also informed him of the need to report to the agency by the 10th day of the next month if his gross monthly household income exceeded \$2,069.
15. On September 9, 2013, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would increase to \$502/month effective October 1, 2013. It informed him that this was based on a household size of three and income from unemployment compensation of \$163/week. It also informed him of the requirement to report to the agency by the 10th day of the next month if his gross monthly household income exceeded \$2,116.
16. On October 14, 2013, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would be \$188/month effective November 1, 2013. It informed him that this was based on a household size of three and income from Petitioner's employment with [REDACTED] of \$400/week. It also informed him of the requirement to report to the agency by the 10th day of the next month if his gross monthly household income exceeded \$2,116.
17. On January 9, 2014, the agency generated a summary of the Petitioner's six month renewal. The Petitioner and two children were noted as household members. Petitioner electronically signed the application.
18. The agency commenced an investigation into the Petitioner's living arrangements. Based on its investigation, the agency concluded that [REDACTED] lived in the Petitioner's household during the period of February 1, 2012 – December 31, 2013.
19. The agency received verification that [REDACTED] was employed at [REDACTED] during 2012 and 2013 and earned the following gross wages:

February, 2012	\$2,333.50	March, 2012	\$3,175.25
April, 2012	\$2,738.13	May, 2012	\$2,733.25
June, 2012	\$2,738.13	July, 2012	\$1,998.75
August, 2012	\$1,040.00	September, 2012	\$2,432.63
October, 2012	\$2,889.26	November, 2012	\$2,151.51
December, 2012	\$1,088.76	January, 2013	\$2,104.38
February, 2013	\$2,235.94	March, 2013	\$2,892.38
April, 2013	\$2,408.07	May, 2013	\$2,397.94
June, 2013	\$2,873.82	July, 2013	\$2,068.88
August, 2013	\$3,013.88	September, 2013	\$2,397.94
October, 2013	\$2,590.32	November, 2013	\$2,689.88

- December, 2013 \$2,239.32
20. The agency received verification that the Petitioner was employed at [REDACTED] during 2012 and had the following gross wages:
- | | | | |
|--------------|------------|------------|------------|
| April, 2012 | \$ 60.00 | May, 2012 | \$ 477.00 |
| June, 2012 | \$2,646.50 | July, 2012 | \$1,382.50 |
| August, 2012 | 317.50 | | |
21. The agency received verification that the Petitioner was employed at [REDACTED] during 2012 and had the following gross wages:
- | | | | |
|-----------------|------------|----------------|------------|
| September, 2012 | \$1,959.00 | October, 2012 | \$1,991.00 |
| November, 2012 | \$2,201.00 | December, 2012 | \$ 352.00 |
22. The agency received verification that the Petitioner was employed at [REDACTED] during 2013 and had the following gross wages:
- | | | | |
|----------------|------------|-----------------|------------|
| August, 2013 | \$1,273.65 | September, 2013 | \$1,400.23 |
| October, 2013 | \$1,498.45 | November, 2013 | \$1,886.97 |
| December, 2013 | \$1,340.55 | | |
23. On July 1, 2015, the agency issued FS Overpayment Notices to the Petitioner as follows:
- | | | |
|--------------------|-----------------------------------|------------|
| Claim # [REDACTED] | April 1, 2012 – July 31, 2012 | \$ 580.00 |
| Claim # [REDACTED] | September 1, 2012 – Nov. 30, 2012 | \$ 443.00 |
| Claim # [REDACTED] | February 1, 2013 – Dec. 31, 2013 | \$4,999.31 |
24. On August 26, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS 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), see also FoodShare Wisconsin Handbook (FSH), § 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 C.F.R. § 273.18(b); see also FSH, § 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FSH, § 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. Id.

All adults that were included in the household or should have been included in the household at the time the overpayment occurred are liable for the repayment of the overissuance of FS benefits. FSH, § 7.3.1.2; see also 7 CFR 273.18(a)(4)(i).

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

In this case, the agency asserts that the Petitioner failed to accurately report household composition and income. Specifically, the agency alleges that Petitioner resided with [REDACTED] and their two minor children from February, 2012 through December 31, 2013 and that the Petitioner failed to accurately report household composition during that time. In addition, the Petitioner did not report [REDACTED] in the household

and did not report [REDACTED]'s income until December, 2012. Further, the agency alleges the Petitioner did not report when gross monthly household income exceeded the reporting requirement of 130% of the federal poverty level.

At the hearing, the Petitioner testified that he does not dispute that [REDACTED] lived with him for most of the overpayment period. He and [REDACTED] testified that she moved in to Petitioner's home in or about April, 2012. [REDACTED] testified that they began discussions about living together in February, 2012 when she found out she was pregnant. The Petitioner also testified that [REDACTED] moved out of the home temporarily in January, 2013 and he did comment to the agency that she was not in the home. He did not, however, request that she be removed from the FS assistance group at that time.

[REDACTED] testified that she never requested FS benefits and did not know that she had been added to the household and that she received FS benefits.

Based on the evidence, I conclude that the agency properly determined the Petitioner lived with [REDACTED] and their two children from February, 2012 – December 31, 2013 and that Petitioner did not accurately report household composition when he applied for FS benefits. Further, the evidence demonstrates that the Petitioner did not report his residence with [REDACTED] and the children and did not report [REDACTED]'s income until December, 2012. The evidence also demonstrates that, with the exception of August, 2012 and December, 2013, the household's income exceeded 130% of the FPL each month of the overpayment period and the Petitioner did not report this to the agency.

Specifically, with regard to the overpayment period, the Petitioner's application of February 27, 2012 gives [REDACTED]'s address as his residence. The agency mailed notices to the Petitioner at that address. The Petitioner presented no evidence to rebut the agency's evidence that he was residing at [REDACTED] in February and March, 2012. The Petitioner concedes he resided there for the remainder of the overpayment period.

With regard to [REDACTED]'s testimony that she never requested FS benefits, as the mother of Petitioner's children, the FS Handbook requires that she be included in the FS group when she is in the same residence. See FS Handbook, § 3.3.1. I note that she was only included in the FS group and benefits were issued to her only for January, 2013. Thereafter, she was removed from the FS group and no benefits were issued for her.

As to her removal from the FS group, I conclude that the agency properly removed her based on Petitioner's undisputed report to the agency that she was not in the home. Benefits cannot be issued to an individual that is reported as being out of the home and the Petitioner did not indicate that her absence was temporary nor did he call to report that she had returned to the home shortly thereafter.

I reviewed the agency's calculations of the overpayment and find no error. Based on the evidence, I conclude the agency properly seeks to recover an overissuance of FS benefits to the Petitioner in the amount of \$6,022.31 for the periods of April 1, 2012 – July 31, 2012, September 1, 2012 – November 30, 2012 and February 1, 2013 – December 31, 2013.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits to the Petitioner in the amount of \$6,022.31 for the periods of April 1, 2012 – July 31, 2012, September 1, 2012 – November 30, 2012 and February 1, 2013 – December 31, 2013.

THEREFORE, it is

ORDERED

That the Petitioner's 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 25th day of November, 2015

\sDebra Bursinger
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 November 25, 2015.

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