



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/168550

PRELIMINARY RECITALS

Pursuant to a petition filed September 08, 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 September 29, 2015, at Racine, Wisconsin. The record was held open post-hearing to allow the Petitioner to submit additional information. On October 12, 2015, the Petitioner submitted additional evidence and the record was closed.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$3,130 for the period of August 6, 2013 – August 31, 2014 due to a failure to report accurate household members.

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

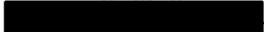
By: Dean Landvatter

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 # ) is a resident of Racine County. Petitioner owns a home on .

2. On August 6, 2013, the Petitioner's daughter FG reported to the agency that she was homeless but uses the Petitioner's [REDACTED] address as her mailing address. FS was 18 years of age at the time of the application. She reported a household size of one. On September 30, 2013, FS submitted a renewal, reporting Petitioner's address as her mailing address. She again reported that she was homeless. She also reported she was pregnant. She reported a household size of one.
3. On February 5, 2014, FG submitted a renewal application reporting that she lives at the Petitioner's address. She reported a household size of two consisting of herself and her minor child.
4. On April 27, 2015, FG reported to the agency that she paid rent for a room in her mother's house and had lived there from March, 2013 – August, 2014 when she moved to an apartment on [REDACTED] in Racine. She reported that she paid her mother \$300/month.
5. On August 5, 2015, the agency issued FS Overpayment Notices and worksheets to the Petitioner informing her that the agency seeks to recover an overissuance of FS benefits in the total amount of \$3,130 for the period of August 6, 2013 – August 31, 2014.
6. On September 8, 2015, 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, § 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, FS Handbook, § 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, § 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

All adult or emancipated minors 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. FoodShare Wisconsin Handbook, § 7.3.1.2; 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 by it 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 alleges that the Petitioner is liable for an overissuance of FS benefits that occurred when FG received benefits but did not report that she lived with the Petitioner. The Petitioner disputes that she lived with FG during the overpayment period.

The agency produced evidence that demonstrates that FG was under age 22 when she applied for and received FS benefits. Per policy, parents and children under age 22 who reside together must be considered as a household for purposes of FS benefit eligibility. See FoodShare Wisconsin Handbook, § 3.3.1.3. The agency produced evidence that the Petitioner owns a home on [REDACTED] and that FG was living in the home during the overpayment period.

While the agency's evidence establishes that FG was living at the home on [REDACTED] during the overpayment period, there is insufficient evidence to establish that the Petitioner was actually living at the

home. The only evidence produced by the agency regarding the Petitioner's residence consists of two CCAP reports that were outside the relevant time period.

The Petitioner does not dispute that she owns the home. She testified that she rented the home to FG while she lived in Milwaukee. Post-hearing, the Petitioner submitted a statement from the individual that she purportedly lived with. The statement indicates that Petitioner resided in Milwaukee from January, 2013 – February, 2014. The Petitioner also produced a handwritten statement signed by the Petitioner and FG stating that FG would rent the [REDACTED] house for \$300/month beginning February, 2013.

There was not clear evidence regarding whether or when the Petitioner may have moved back to the home on [REDACTED]. It is the agency's burden to establish the Petitioner's liability for the overpayment. In this case, the agency has not presented sufficient evidence to demonstrate that the Petitioner was living with FG during the overpayment period. The little evidence that was submitted (the CCAP reports) is rebutted by the Petitioner with documentation and testimony that establishes she was not living with FG for at least part of the overpayment period.

Without sufficient evidence to establish that FG and the Petitioner were residing together at the [REDACTED] home, I conclude that the agency does not properly seek to recover an overissuance of FS benefits from the Petitioner for the period of August 6, 2013 – August 31, 2014.

CONCLUSIONS OF LAW

The agency did not establish that FG and the Petitioner resided together during the overpayment period. The agency may not recover an overissuance of FS benefits from the Petitioner for the period of August 6, 2013 – August 31, 2014.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to rescind FS Claim # [REDACTED] and # [REDACTED] issued to the Petitioner and to cease any collection actions against the Petitioner on those claims. These actions shall be completed within 10 days of the date 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 30th day of October, 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 October 30, 2015.

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