



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/168943

PRELIMINARY RECITALS

Pursuant to a petition filed September 22, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on November 03, 2015, at Madison, Wisconsin.

The issue for determination is whether petitioner is liable for a FS overpayment due to her husband being unreported as part of the FS household.

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: 
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Dane County.
2. Petitioner was a FS program recipient from at least 2009.
3. Petitioner was married to  on June 8, 2009.

4. From that time onward, petitioner never reported [REDACTED] as a resident in the household.
5. From the time of the marriage until November 2011 [REDACTED] was a resident of the household and a food unit member for FS purposes.
6. Including [REDACTED] in the food unit would have resulted in less FS that the household actually received.
7. During a portion of the period from July 2009 to November 2011, [REDACTED] also received FS on his own case. Petitioner was an adult spouse in the same household during that time.
8. The agency issued numerous overpayment notices to petitioner on 8/13/15.
9. Petitioner filed a timely appeal.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

FS eligibility and allotments are based on income and household composition. The agency alleges that [REDACTED] [REDACTED] was part of the FS household from July 2009 to July 2015 but was not reported to the agency and his income was not budgeted which allowed for more FS than the household was otherwise entitled to receive. Petitioner's primary argument is that her husband lived in the household for only part of the period for which the agency determined the overpayment. Petitioner stated that after her marriage, [REDACTED] came to stay some nights each week until November 2010 at which time he moved in full-time. She explained that the marriage did not work out and he only lived in her home from November 2010 to May 2011. She concedes her liability for overpayment during this period. But, she explained that her husband left her home in May 2011 and has not been back to live as part of the household.

The agency provided a detailed documentary trail that established that [REDACTED] [REDACTED] used the home address from 2010 until as recently as 2015. He provided the home address as his own home address during that period to courts, employers, credit agencies, and the Department of Motor Vehicles. But, all the evidence provided by the Department only establishes that [REDACTED] was using petitioner's address for mailing and employment and other official purposes. None of the evidence physically places [REDACTED] in the home at any time. The agency provided no testimony of persons who witnessed him living in the home, mowing the lawn, picking up children from school, etc. The fact that someone uses a mailing address does not establish presence in the household.

According to the *FoodShare Wisconsin Handbook*, spouses and parents of children under 22 years must be considered part of the food unit, even if they do not purchase and prepare food with the rest of the group. *FS Wisconsin Handbook* § 3.3.1.3. Furthermore, a person is only temporarily absent from a household if they are absent for less than two months and intend to return. Based on the representations of petitioner that the couple was married and [REDACTED] resided in the home part-time from July 2009 to November 2010, [REDACTED] should have been budgeted in the household as he clearly intended to return and was not temporarily absent for months. Petitioner also concedes the period from November 2010 until [REDACTED] was gone for good and was removed from her lease in November 2011. Thus, the overpayment is proper from July 2009 to November 2011. But, petitioner was adamant that [REDACTED] has been gone from the home from November 2011 onward. She explained that she and [REDACTED] have grandchildren together and see each other, but they do not get along and do not reside together. Petitioner conceded that [REDACTED] has stayed over occasionally which I took to mean less than 2 or 3 times per year. Aside from [REDACTED]'s reports of the address to officials or employers, the agency offered no evidence to rebut this claim by petitioner.

Petitioner did not dispute any of the Department calculations regarding the amounts of overpayment during the pertinent periods. I therefore accept them as correct. According to the agency's FS overpayment notices and worksheets, the overpayment from July 2009 to the end of June 2010 was \$1,972. From July 2010 to the end of June 2011 it was \$3,046. And, from July 2011 to the end of November 2011 the overpayment is alleged to be \$1,332. The total during the entire period for which I am affirming the overpayment is \$6,350.

It is indeed possible that petitioner lied through the hearing and [REDACTED] lived in the home after 2011. But, more proof is needed than some public records showing that [REDACTED] gave the address when pulled over for speeding or for employment related mail to be sent. The Department simply did not provide enough evidence to meet its burden regarding the period which petitioner specifically disputed at hearing.

Also, [REDACTED] had a separate FS case during a portion of the period when petitioner and he were part of the same FS household. Under FS rules, petitioner is also liable for an overpayment to [REDACTED] during that period because all adult members of the household are liable for an overpayment:

All adult [a person who is 18 years old or older] or emancipated minor [A married, widowed or divorced person who is at least 16 years old, a minor who has given birth, a minor emancipated by court order, a minor emancipated by parental consent or a minor living on his or her own who is not supported by parents] food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

FoodShare Eligibility Handbook, Appendix 7.3.1.2; see also 7 C.F.R. §273.18(a)(4).

As part of my review of the total overpayment liability this ALJ noted that claim numbers [REDACTED] and [REDACTED] covered the same period of time and were for the same amount. This appeared to be error. This ALJ contacted Ms. [REDACTED] at the Department for an explanation and Ms. [REDACTED] conceded that one of the notices appears to have an incorrect amount listed on it due to a clerical error. Given the error on the written notice, I am remanding the case to the Department for issuance of new notices consistent with my conclusions of law based on the evidence.

CONCLUSIONS OF LAW

1. Petitioner is liable for the overissuance of FS on her case for the period from July 2009 to November 2011 when she shared a household for FS purposes with [REDACTED].
2. Petitioner is liable for the overissuance of FS on [REDACTED]'s case for the period from July 2009 to November 2011 when she shared a household for FS purposes with [REDACTED].
3. The agency failed to establish beyond a preponderance of evidence that [REDACTED] was a FS household member with petitioner after November 2011.

THEREFORE, it is

ORDERED

1. That this matter is remanded to the agency with instruction to redetermine the FS liability of petitioner consistent with the conclusions of law above. The Department should issue new notices to petitioner covering the new period of overpayment.

These actions must 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.

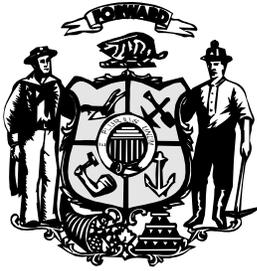
APPEAL TO COURT

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 Madison,
Wisconsin, this 7th day of December, 2015

\sJohn P. Tedesco
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 7, 2015.

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