



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/173204

PRELIMINARY RECITALS

Pursuant to a petition filed March 28, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 26, 2016, at La Crosse, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner's liability for a FS overpayment in the amount of \$3,564.

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: [REDACTED]
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. Petitioner owns a home in West Salem, WI.
3. Petitioner's mother lives in Onalaska.

4. Petitioner had a FS case claiming the West Salem from 10/1/13 to 2/29/16. On that case he benefitted from shelter and utility deductions.
5. The agency determined that petitioner was overpaid during this period in the amount of \$3,564 because he was actually living with his mother and would have been unable to claim or benefit from those deductions on his FS case.
6. Petitioner appealed.

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, Appendix 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 FoodShare Wisconsin Handbook, App. 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.*

As decided in prior cases before the Division of Hearings and Appeals, “discovery” was not the date of referral of a likely overpayment for investigation; discovery is the date when the agency actually determines an overpayment of a fixed amount occurred, and sends a notice to the FS recipient. Overpayments due to client error may be recovered for up to 6 years prior to discovery. However, a recent April 4, 2012 BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012), indicates that the “discovery” date is not the county agency’s FS Overpayment Notice, but instead the “the date that the ESS became **aware** of the potential that an overissuance may exist.” In this case, that date appears to be sometime during May 24, 2012.

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

The agency’s case is premised upon the assertion that petitioner actually lived in his mother’s residence during the overpayment period. This would result in petitioner’s not being permitted to benefit from the shelter and utility deductions granted based on his allegedly false claim of living at a West Salem address.

The crux of the agency’s determination is that while petitioner owned a home in West Salem, he actually resided with his mother in Onalaska for the past 8 years. The agency’s case was premised upon the testimony of petitioner’s brother and sister who testified that petitioner lived with his mother during that time. The sister also testified that petitioner has stated under oath in other court proceedings relating to guardianships and temporary restraining orders/injunctions that he has lived with his mother. The county representative also testified that he spoke with petitioner’s attorney on one occasion during which the attorney stated that petitioner lived with his mother.

Petitioner alleges that the brother and sister testified falsely and that the case was precipitated by the brother’s “tip” to the agency brought on due to an underlying family dispute involving guardianship of the mother. Presumably, there is some related conflict involving subsequent estate issues. There is clearly no love lost between these siblings. It was not difficult to see that there are competing motives and agendas by the various siblings. While petitioner’s presentation in written exhibits and his oral testimony and cross-examination was overall scattered and overzealous, there is also reason to doubt the

complete veracity of the siblings. I find it highly likely that one of petitioner's siblings phoned in the fraud tip to the Department. Similarly, the siblings apparently readily provided written statements and oral testimony at hearing. This testimony is supposed to be the reliable non-hearsay testimony that corroborates the other hearsay evidence. But, I find the testimony of the siblings to not possess the reliability necessary for the agency to meet its burden. This is a family squabble with great animosity and bias on all sides of the family. More objective evidence would be required to establish the overpayment.

CONCLUSIONS OF LAW

The agency did not meet its burden of proving that it had correctly determined the overpayment.

THEREFORE, it is **ORDERED**

That the agency shall reverse the determination of FS overpayment and cease all collection activities. Any sum already recouped shall be returned. Any amounts recouped through reduction of previous FS allotments should be issued as a supplemental allotment. These actions shall be completed in 10 days from 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 23rd day of May, 2016

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 23, 2016.

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