



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 200230

PRELIMINARY RECITALS

Pursuant to a petition filed on October 19, 2020, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock Cty Human Services regarding FoodShare benefits (FS), a hearing commenced on November 3, 2020, by telephone. The hearing was then adjourned at petitioner's request after testimony was received to allow for further review of agency exhibits. Petitioner was involved in scheduling the second day of hearing, which was set for December 1, 2020. The administrative law judge made multiple unsuccessful attempts to reach petitioner by telephone on December 1, 2020. The record closed on December 1, 2020, with Exhibits 9, 10, and 11, included in the record.

The issue for determination is whether petitioner is liable for an overpayment of FS benefits between January 1, 2018, and June 30, 2018, in the amount of \$1,192.00, claim [REDACTED].

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED] and [REDACTED]
Rock Cty Human Services
1900 Center Avenue
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeal

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County. He was part of a FS household that included his wife. His wife was the casehead.
2. Petitioner's household received FS benefits December 2016. Exhibit 7.
3. On January 23, 2017, petitioner's wife called the agency and reported that petitioner recently commenced employment at [REDACTED]. Exhibit 9.
4. Petitioner's household did not receive FS benefits March 2017 through August 2017. Exhibits 7.
5. On September 5, 2017, petitioner's wife called the agency to reapply for FS benefits as a household 9, which included the petitioner. See Exhibits 1 and 10.
6. Petitioner's household received FS benefits between September 25, 2017, and June 9, 2018. Exhibit 7.
7. On September 26, 2017, the agency sent petitioner's wife an About Your Benefits letter that indicated her household was approved for FS benefits, with allotments of \$239.00 each month starting October 2017 and continuing until there was a change in the case. The letter also instructed that that the agency needed to be informed within ten days if the household's total monthly income before taxes exceeded \$3,791.67. Exhibit 1.
8. October 12, 2017, the agency sent petitioner's wife an About Your Benefits letter that indicated her household was receiving \$239.00 each month in FS benefits. The notice instructed that the household needed to report if the monthly total income before taxes exceeded \$4,930.00. Exhibit 2.
9. On February 2, 2018, petitioner's wife submitted an electronic FS six month report form to the agency and did not report a change in household income. See, Exhibit 11.
10. The household income exceeded reportable limits in November 2017. The income consisted of earned income from petitioner's employment at [REDACTED] and SSI received by one of the minor children. The household failed to report income exceeding program limits by December 10, 2017.
11. Petitioner's FS benefits ended on June 30, 2018. Exhibit 7.
12. On September 16, 2020, the agency sent petitioner a FoodShare Overpayment Notice informing him that his FS household received more benefits than it was entitled to receive. The overpayment totaled \$1,192.00 between January 1, 2018, and January 30, 2018, and resulted from the household's failure to report income exceeding program limits. Exhibit 4.
13. The agency determined the amount of the FS overpayment by taking the difference between the amount of the allotment issued between January 1, 2018, and June 30, 2018, and the amount of the allotment that petitioner's household was entitled to if the income had been correctly reported. See, Exhibit 3 for the agency's computations.
14. Petitioner appealed.

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). Overpayments due to "agency error" may only be recovered if they were issued during the twelve months prior to the date the agency discovered the overpayment. FS Handbook, § 7.3.2.1.

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).

According to FS regulations, spouses must be included in the same FS household, even if they do not purchase and prepare meals together. FS Handbook, 3.3.1.3 and 7 C.F.R. 273.1 (b)(1). All adult members of a FS household who were part of the household at the time the overpayment occurred are liable for the overpayment. 7 C.F.R. 273.18(a)(4) and FS Handbook, 7.3.1.2.

In petitioner's appeal, he indicated that his family did not receive FS benefits in 2018. Exhibit 8. He reiterated that claim at the hearing. His wife testified that she called the FS agency in January 2017 to stop their benefits as she knew they would no longer qualify due to petitioner's employment. She acknowledged that she probably received notices from the agency thereafter but was not certain as that was over 2 years ago. Petitioner also testified that he knew his wife had called the agency to stop their FS benefits as they knew his income would make them ineligible for the program.

The agency's case comments indicate that petitioner's wife did call the agency in January 2017 to report new employment for her husband. Thereafter, petitioner's household did not receive FS benefits between March 2017 and August 2017. However, the record also indicates that on September 5, 2017, petitioner's wife called the agency and reapplied for FS benefits. A portion of that telephone call was recorded and introduced into the record. In that call, the caller identified herself by name and provided the same address as reflected in the case file. The caller's voice is consistent with that of petitioner's wife. Moreover, after that call, the agency sent letters to petitioner's current address notifying the wife of the amount of FS benefits her household would be receiving and setting forth the reporting requirements. She then later submitted an on-line FS six month report form in February 2018 in order to continue to receive FS benefits. Her household ultimately received FS benefits September 2017 through June 2018. The agency's evidence that petitioner's wife applied for and received FS benefits during the time period in dispute is more compelling and reliable than the self-serving testimony provided by petitioner and his wife.

The only aspect of the agency's FS overpayment calculations and computations that was questioned at the hearing was the fact that petitioner's household did not receive a shelter deduction. Exhibit 3.

A person is eligible for a shelter deduction only if allowable shelter expenses exceed 50% of a household's adjusted income after other deductions are applied. See 7 C.F.R. §273.9(d)(6); FS Handbook, App. 4.6.7. For example, in January 2018 the household's gross income was \$5,476,87. Exhibit 3. After the earned income deduction and standard deduction were applied, the adjusted income was \$4,497.26. The shelter deduction is then calculated by adding the shelter expense of \$745.52¹ to the standard utility rate of \$448.00² which equals \$1,193.52. As the combined shelter and utility costs (\$1,193.52) did not exceed 50% of the adjusted income ($\$4,497.26 \times 50\% = \$2,248.63$), petitioner was not entitled to a shelter deduction. This was the case for each of the months involved in the overpayment period.

I find that the record supports the agency's finding that the petitioner is liable for the overpayment of FS benefits in the amount of \$1,192.00.

CONCLUSIONS OF LAW

¹ The only information in the record indicating the petitioner's shelter expense was the About Your Benefits letters issued by the agency in September 2017 and October 2017. Exhibits 1 and 2. The petitioner did not present evidence of a different shelter expense.

² Which was the applicable rate in 2018. FS Handbook, 8.1.3, Release 18-01.

The agency correctly determined that petitioner was liable for an overpayment of FoodShare benefits between January 1, 2018, and June 30, 2018, in the amount of \$1,192.00, claim [REDACTED].

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, 4822 Madison Yards Way, 5th Floor North, 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.

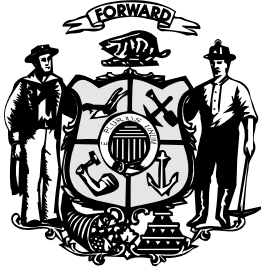
APPEAL TO COURT

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, **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 8th day of January, 2021

\s _____
Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
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 January 8, 2021.

Rock Cty Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability