



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/155257

PRELIMINARY RECITALS

Pursuant to a petition filed February 04, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane and Columbia County Departments of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on March 18, 2014, at Portage, Wisconsin. At the request of the parties, the record was held open until April 22, 2014 for the submission of closing arguments to the Division of Hearings and Appeals (DHA). The parties timely submitted their arguments to DHA which are received into the hearing record.

The issue for determination is whether the county agency is correctly seeking recovery of a total FoodShare (FS) overpayment of \$6,997 to the petitioner during the period of June 1, 2010 to January 31, 2014, due to the client error of failure to timely report accurate FS household members.

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: Alex Premo, county agency fraud investigator
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Columbia County who received FoodShare (FS) for a household of three (petitioner, his minor daughter, and his minor son, KB) during the period of June, 2010 to January 31, 2014.
2. The petitioner began receiving FoodShare (FS) benefits as of July 25, 2008.
3. The petitioner is divorced from his wife, [REDACTED], who is the mother of KB. See Columbia County Family Court 7 page Stipulation and Order for Physical Placement signed by Judge Daniel S. George on March 19, 2010 in Case No. 09-PA-17. See Exhibit 2.
4. On page 2 (paragraph #5) of the March 19, 2010 Order, Judge George ordered that petitioner shall have placement of KB about 20% - 25% of the time, and that his ex-wife shall have placement of KB about 75- 80 % of the time. See Exhibit 2.
5. The petitioner requested to add KB to his FS household on or about May 24, 2010, but only provided page one of the March 19, 2010 Court Order, and did not include page 2 (paragraph #5) of that Court Order regarding physical placement of KB with the petitioner.
6. The petitioner did not inform the county agency during any of his annual FS reviews/ interviews of May 25, 2010, June 7, 2011, June 25, 2012 or June 18, 2013 that he had placement of KB less than 25% of the time, but instead reported that he had no changes in the placement of KB.
7. The county representative concluded that petitioner had KB about 50% of the time, and thus KB remained on the petitioner's FS case.
8. On or about January 6, 2014, the Columbia County agency sent a FS referral to the Dane County agency to investigate the alleged FS overpayment or FS fraud against the petitioner.
9. On or about January 8, 2014, the county agency obtained a copy of the 7 page March 19, 2010 Court Order, and thus became aware that petitioner's child, KB, was not residing with petitioner at least 50% of the time, but instead was residing the majority of the time with his mother.
10. The petitioner's FS household had incorrectly received FS benefits for three (instead of two).
11. The county agency sent January 9, 2014 FS Overissuance Notices to the petitioner stating that petitioner was overpaid FS in the total amount of \$6,997 during the period of June 1, 2010 to January 31, 2014, due to the client error that petitioner failed to report and continued to report his son, KB, as part of his FS household, when the child was primarily in the care of the child's mother, [REDACTED].
12. The petitioner did not dispute or appeal the removal of KB from his FS household as of February 1, 2014.
13. During the March 18, 2014, petitioner did not dispute that he had custody and placement of KB less than 25% of the time for FS eligibility benefit purposes per FoodShare Handbook, 3.2.1.1. Petitioner also did not dispute the calculation of the FS overpayment, but argued that the overpayment was due to agency error.

DISCUSSION

The specific FS policy regarding the placement situation in this case states:

3.2.1.1 Joint or Shared Physical Custody of Children

Children are included in the household where they reside when they are under the care and control of a parent or other caretaker in that household. There may be situations when the residence of a child is not easily determined. There are many methods that can be used to determine the child's residence. If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit.

.....

Only one parent can receive FS for a child. If you still can not determine which food unit the child should be in, the caretaker that first applies would be eligible. . . .

FoodShare Wisconsin Handbook, App. § 3.2.1.1.

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.*

During the March 18, 2014 hearing, the county agency representative, Alex Premo, and two other county agency ESS workers presented testimony and evidence to establish by the preponderance of the evidence the total FS overpayment of \$6997 against the petitioner from June 1, 2010 to January 31, 2014 due to client error. The petitioner did not contest that he had placement of his son less than 25% of the time or the February 1, 2014 removal of KB from his FS household. Instead, petitioner argued that the county agency did not perform their responsibility to request verification of the percentage of time that KB was placed with petitioner rather than his ex-wife, and therefore the overpayment was due to agency error, not client error.

The petitioner also argued that the FS overpayment was agency error due to alleged mismanagement and lost documents regarding his FS case. However, the county agency correctly responded that petitioner failed to establish with reliable documentation this alleged agency mismanagement or lost documents. For example, petitioner alleged that he submitted the complete seven page March 19, 2010 Court order to the county agency, but only provided reliable documentation that Columbia County received the first page of that order (which misleadingly appeared to indicate a joint, 50/50 placement of KB with both his parents). Petitioner had no evidence that the relevant and material paragraph #5 on page 2 of that Order was received by the county agency prior to January 8, 2014. See Finding of Fact # 3 - #5 above.

The petitioner also appeared to be asserting that the first page of the Court Order provided by petitioner should not have been accepted by the county worker, and that the county should have required further verification. However, All FS applicants and recipients have a duty to accurately and truthfully report income and household composition to the county agency. 7 C.F.R. §273.12, “Reporting requirements.”

Furthermore, a FS recipient has the duty to cooperate in providing accurate and true income and household composition information on both his/her FS application and during later reviews. The FS recipient is also required to cooperate with the county agency in verifying all household income in order for the county agency to accurately determine a FS application or recipient's FS eligibility and benefits. 7 C.F.R. §273.2(d), "Household cooperation."

Moreover, the county agency representative responded that the FoodShare Wisconsin Handbook, App. § 1.2.11 instructs agencies to not over verify, and to only request what is needed to determine benefits eligibility. Apparently, the petitioner by submitting only page 1 of the March 19, 2010 Order satisfied the reviewing worker that the placement of KB was a joint, 50/50 placement, and thus KB could be added to petitioner's FS group. Furthermore, unless a county worker believes that information provided by a FS recipient or applicant is inaccurate, then there is no mandatory need for further questioning or verification per FoodShare Wisconsin Handbook, App. § 1.2.5, "Questionable Items."

During the hearing, petitioner presented himself as an intelligent and analytical person who was knowledgeable about his FS benefits. He also appeared to be attempting to manipulate the FS system to maximize his FS benefits while at the same time not accepting any responsibility for providing full and truthful information to the county agency regarding his FS household composition for accurate calculation of his FS benefits. The petitioner's testimony was questionable in its credibility. First, he controlled the information he provided to the county agency to increase his FS benefits (adding his son to his FS case). He then argued that the county agency should have recognized that his verification was inadequate, and should have required further verification before it granted his request for increasing his FS group from two to three persons. Such argument is not convincing that the FS overpayment was due to agency error, and not client error. As explained in Finding of Fact #6 above, petitioner failed to explain or provide any change/correction that KB was only partially residing with him during annual FS interviews of May 25, 2010, June 7, 2011, June 25, 2012 or June 18, 2013. Based upon the hearing testimony and the written submission by the parties, the preponderance of the evidence indicates that the FS overpayment was due to client error, not agency error.

The petitioner did not contest that his FS household had received FS benefits for a group of three during the FS overpayment period of June 1, 2010 to January 31, 2014. Furthermore, the petitioner did not offer any reliable evidence to refute the accuracy of the county agency's FS overpayment determinations or calculations. Overall, the petitioner's credibility was questionable due to inconsistencies and contradictions in his testimony, and for the reasons explained above. In any case, the controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: "The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . . "7 C.F.R. § 273.18(a); see also FoodShare Wisconsin Handbook, Appendices 7.3.1.9 and 7.3.1.1. Accordingly, for the above reasons, the county agency is correctly seeking to recover the total overpayment of \$6,997 to the petitioner during the period of June 1, 2010 to January 31, 2014, due to the client error of failure to timely report accurate household members, and thus should have received FS for a group of two rather than three during the overpayment period.

CONCLUSIONS OF LAW

The county agency is correctly seeking to recover the total overpayment of \$6,997 to the petitioner during the period of June 1, 2010 to January 31, 2014, due to the client error of failure to timely report accurate household members, and thus should have received FS for a group of two rather than three during the overpayment period.

THEREFORE, it is

ORDERED

The petition for review herein be and the same 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, 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 May, 2014

\sGary ■ Wolkstein
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 7, 2014.

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