



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/171300

PRELIMINARY RECITALS

Pursuant to a petition filed January 8, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by the Shawano County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on February 3, 2016, by telephone.

The issue for determination is whether petitioner was overpaid FS when she failed to report employment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

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

By: [REDACTED]
Shawano County Dept. of Social Services
607 E. Elizabeth Street
Shawano, WI 54166-3105

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Shawano County.
2. In 2014 and 2015 petitioner received FS as a one-person household. Her only income in 2014 was \$862 monthly social security, which increased to \$877 in 2015. By a notice dated September 3, 2014, the county informed petitioner that she would receive \$178 in FS as of October 1, 2014. The notice informed petitioner about a number of changes that she was required to report, including any new source of income.

3. Petitioner began to work at [REDACTED] on October 26, 2014, making \$1,769 per month. She did not report the income to the county. Her last full pay check at the employer was dated February 20, 2015. She received a smaller check for \$252 on March 5 for what appears to be mileage reimbursement.
4. The county discovered the income via a state wage match. The worker obtained the income information from [REDACTED]. She determined that the income, combined with petitioner's social security, put petitioner over the FS gross income limit effective December 1, 2014.
5. By two notices dated November 20, 2015, the county informed petitioner that she was overpaid \$178 in December, 2014, claim no. [REDACTED], and \$1,539 from January 1 through September 30, 2015, claim no. [REDACTED].

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). 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).

During the period December 2014 through September, 2015, the monthly gross income limit for a one-person FS household was \$1,946. FS Handbook, Appendix 8.1.1 (10/17/14 release).

Because petitioner began working on October 26, 2014, she should have reported the job by November 5, which would have affected December FS. Petitioner's earned income plus social security put her well over the FS gross income limit, and the county correctly found that petitioner was overpaid FS beginning December 1, 2014 because her income would have made her ineligible. Petitioner testified that she does not remember being told that she had to report income. Assuming that she does not remember, all overpayments must be recovered, even ones resulting from client error as well as agency error. Since various documents tell FS recipients of the need to report income, including the September 3, 2014 notice, the error is correctly classified as client error (I note that the county did not call it fraud, which would happen if the worker thought that petitioner deliberately refused to provide the information).

Although I conclude that petitioner was overpaid, I find that the county erred in the length of the overpayment. Ms. Marohl testified that the FS Handbook requires the overpayment to extend to the person's next renewal, which was in September, 2015. I cannot find that provision in the Handbook. The closest I can find is this statement in Appendix 7.3.2.1 under the heading "Calculating Overissuance Claim Amounts – Client Error:" "The overissuance period begins with the first month had the change been reported timely, and would have been effective up to the month prior to when the case was corrected." That provision refers to instances where the error is discovered while the error was ongoing, and then the county corrected current benefits.

In this case the error existed only during the time when petitioner actually was employed. She was not overpaid after the job ended. I conclude, therefore, that the overpayment period was only for the months of December, 2014, January, and February, 2015. Petitioner's job ended in mid-February, 2015. The March check was for mileage reimbursement, which is excluded income. See FS Handbook, App. 4.3.2.2, no. 4.

The result will be that petitioner was overpaid \$178 in December, 2014, and \$171 in each of January and February, 2015, for a total overpayment of \$520.

CONCLUSIONS OF LAW

Petitioner was overpaid FS in 2014 and 2015 because she failed to report a job, but the overpayment period should extend only through the month in which she was last employed.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to amend overpayment claim no. [REDACTED] to be \$342 for just the months of January and February, 2015. The county shall do so within 10 days of this decision. Claim no. [REDACTED] is affirmed.

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 8th day of February, 2016

\sBrian C. Schneider
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 February 8, 2016.

Shawano County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability