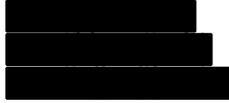




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/171398

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 11, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency correctly established a FoodShare (FS) overpayment in the amount of \$849.00 for the period of September 1, 2013 through January 31, 2014.

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: 
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Racine County. She is a household size of two for the purposes of FoodShare (FS) benefits.
2. On January 14, 2013 the agency sent the petitioner a notice stating that if her monthly gross income exceeded \$1,640.00, she had to report that change by the 10th day of the following month.

The notice went on to provide the example that if her income exceeded that amount in June, she would have to report by the 10th of July.

3. The petitioner's monthly household gross earned income in July 2013 was \$1,641.33. The petitioner had until the 10th of August to report her increase in income. The petitioner never reported this increase to the agency.
4. The petitioner's monthly gross earned income during the overpayment period was as follows:
 - a. \$1,699.43 in September 2013
 - b. \$1,440.05 in October 2013
 - c. \$1,552.10 in November 2013
 - d. \$2,249.30 in December 2013
 - e. \$1,325.93 in January 2014
5. The petitioner had an additional \$503.10 in monthly unearned income during the overpayment period.
6. The petitioner's monthly rent expenses between July 2013 and January 2014 were \$251. In addition to the rent amount, she was responsible for all of her utilities including heat.
7. The petitioner received \$213 in monthly FS benefits from September 2013 through December 31, 2013.
8. Based upon the petitioner's actual income, expenses, and a household size of two, she was eligible for the following monthly FS benefits.
 - a. \$16 in September 2013
 - b. \$16 in October 2013
 - c. \$15 in November 2013
 - d. \$0 in December 2013
 - e. \$106 in January 2014
9. On January 7, 2016 the agency sent the petitioner a notice stating that, under claim number [REDACTED], she was overpaid \$849 in FS benefits from September 1, 2013 to January 31, 2014.
10. On January 19, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The Federal regulation concerning FoodShare (FS) overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare (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 *Code of Federal Regulations (CFR)* § 273.18(b), see also *FoodShare Wisconsin Handbook (FSH)*, §7.3.2.

The FS regulations require that a household reports when their income exceeds 130% of the federal poverty level (FPL). *FoodShare Wisconsin Handbook (FSWH)* § 6.1.1.2. The household must report this increase in income by the 10th of the month following the income exceeding 130% of the FPL. *Id.* Changes reported one month go into effect the following month. *FSWH*, § 6.1.3.6.

In this case the petitioner's income exceeded the reporting requirement in July 2013. At that time 130% FPL for a household size of two was \$1600. This reporting requirement was stated in the January 2013 notice, which explained that the petitioner must report to the agency by the 10th day of the following month in which her household gross income exceeds \$1600.00. The petitioner's income was \$1,641.33 in July 2013. She did not report that to the agency by August 10, 2013. A change reported in August would have been implemented September 1, 2013. Thus, there is a FS overpayment from September 1, 2013 to January 31, 2014.

The amount of an overpayment is the difference between the FS benefits the household actually received and the FS benefits a person was entitled to receive. *FSWH*, § 7.3.1.1. In calculating the monthly FS allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires the county to start with gross income, deducting a limited number of identified deductions from that income to calculate the adjusted income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a household size of 2 is \$155, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

In this case even though the petitioner was over the reporting requirement, and failed to report her increase in income, she was still entitled to some FS benefits during this overpayment period. I have reviewed the agency's calculations of the amount of FS benefits the petitioner was entitled to receive during the overpayment period, and those calculations are correct. The agency properly subtracted this eligible amount from the amount of benefits that the petitioner actually received. Thus, the agency properly established an overpayment in the amount of \$849.00 for the period of September 1, 2013 through January 31, 2014.

The agency categorized this overpayment as client error. The agency discovered a possible overpayment in January 2014 and April 2014 when they received state wage match discrepancies. They did not issue the overpayment notice until January 2016. If an overpayment is the result of client error, the agency has six years from the date of discovery to establish a FS overpayment claim. They are within the six year time limit, and thus have properly established this FS overpayment.

At the hearing the petitioner stated that every time she was given report forms she completed and returned those report forms. The issue here though is not a six month report forms, but rather that the petitioner failed to report a significant increase in her monthly gross income. In July 2013 the agency was only budgeting \$571.04 in earned income. The petitioner's actual earned income that month was \$1,641.33.

CONCLUSIONS OF LAW

The issue for determination is whether the agency correctly established a FoodShare (FS) overpayment in the amount of \$849.00 for the period of September 1, 2013 through January 31, 2014.

THEREFORE, it is

ORDERED

That the petition is 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 Milwaukee,
Wisconsin, this 4th day of March, 2016

\sCorinne Balter
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 March 4, 2016.

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