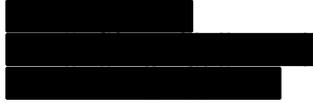




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/172412

PRELIMINARY RECITALS

Pursuant to a petition filed March 02, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on April 20, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly established a FoodShare (FS) overpayment in the amount of \$207 from October 1, 2015 to March 31, 2016.

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: [Redacted]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Milwaukee County. He receives FoodShare (FS) benefits as a household of six.
2. In addition, to the petitioner's employment he owns rental properties. The petitioner reported these rental properties to the agency. He provided his schedule E, but not his 1040.

3. In February 2016 the petitioner provided his 1040. The agency determined that they had failed to add back depreciation to the petitioner's income. They concluded that this was agency error.
4. On February 26, 2016 the agency sent the petitioner a notice of FS Overpayment stating that he was overpaid \$207 in FS benefits from October 1, 2015 to March 31, 2016.
5. The petitioner's monthly household income was as follows:
  - a. October 2015 - \$2,656.55
  - b. November 2015 - \$2,656.55
  - c. December 2016 – \$2,716.75
  - d. January 2016 – \$2,717.55
  - e. February 2016 – \$2,716.75
  - f. March 2016 – \$2,716.75
6. The petitioner was not eligible for a shelter deduction. The agency credited the petitioner the standard deduction and earned income deduction.
7. On March 2, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### **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.*

In this case the overpayment is the result of agency error. The petitioner owns rental properties. A person is allowed to deduct depreciation on his or her taxes when calculating income on rental properties. When calculating a person's eligibility for public assistance benefits, the agency must add back the depreciation. The agency incorrectly failed to do that here. The agency correctly states that the overpayment is the result of agency error, and they are within the timeframe in which to establish and collect this overpayment.

### **CONCLUSIONS OF LAW**

The agency correctly established a FoodShare (FS) overpayment in the amount of \$207 from October 1, 2015 to March 31, 2016.

**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 21st day of April, 2016

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\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 April 21, 2016.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability