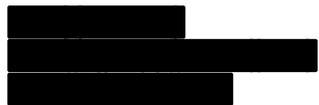




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/172813

PRELIMINARY RECITALS

Pursuant to a petition filed March 10, 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 April 13, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency correctly established a FoodShare (FS) overpayment in the amount of \$241, under claim number [REDACTED], for September and October 2015.

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]
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 # [REDACTED]) is a resident of Racine County. He is the only person in his household.
2. The petitioner began receiving FoodShare (FS) benefits effective January 1, 2015. On December 15, 2014 the agency sent the petitioner a notice stating that he would receive \$16 in monthly FS

- benefits. The notice went on to state that he had to report to the agency when his monthly gross income went above \$1,265. He had until the 10th day of the following month to report such an increase in income.
3. Every six months a FS benefit recipient must complete a six month renewal form (SMRF) in order to continue to receive FS benefits. The petitioner completed his six month renewal, and on June 10, 2015 the agency sent the petitioner a notice stating that his monthly FS benefits would increase from \$16 to \$152. The notice went on to state that he must report to the agency if his household gross income went above \$980.83. This is 100% FPL, not 130% FPL. This is actually the reporting requirement for medical benefits, not for FS benefits. However, the agency only assessed an overpayment for the months, in which the petitioner violated the FS, not the medical reporting requirements.
 4. The petitioner's monthly gross income was as follows:
 - a. June 2015 - \$1,215
 - b. July 2015 - \$1,455
 - c. August 2015 - \$1,200
 - d. September 2015 - \$1,095
 - e. October 2015 - \$1,515
 5. The petitioner received \$152 in monthly FS benefits for September and October 2015. Based upon his actual income, he was only eligible for \$47 of FS benefits in September and \$16 of FS benefits in October 2015.
 6. On January 29, 2016 the agency received a state wage match (SWICA) discrepancy showing that the income the petitioner's employer reported to the State was different than the amount that the agency had budgeted or counted in determining the petitioner's FS benefits. The agency investigated this information. The agency determined the petitioner's actual income as stated above. Based upon that determination the agency concluded that the petitioner was overpaid \$241 in FS benefit for September and October 2015.
 7. On February 25, 2016 the agency sent the petitioner a notice FS overpayment stating that the petitioner was overpaid FS benefits in the amount of \$241, under claim number [REDACTED], for September and October 2015.
 8. On March 15, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The Federal regulations requires States to establish a claim against any household that received an overissuance of FoodShare 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 (FSWH)*, §7.3.2. Overpayments due to "client error" may be recovered for up to six years after discovery. *FSWH*, §7.3.2.1. Overpayments due to "agency error" may only be recovered for up to 12 months from the date of discovery. *Id.* The date of discovery is the date that the agency became aware of the potential overissuance. *Id.* This is synonymous with the date of awareness. *Id.*

When a household applies for FS or completes a FS renewal the household reports their monthly gross income. *FSWH* § 6.1.2; *FSWH* § 2.1.1; *FSWH* § 1.2.4. In addition to these certification or report periods, FS regulations require a household to report when their income exceeds 130% of the federal poverty level (FPL). *FSWH* § 6.1.1.2. The household must report this income by the 10th of the month following the

income exceeding 130% of the FPL. *Id.* These changes go into effect the month following the report. *FSWH* § 6.1.3.6.

In this case the petitioner's income increased above 130% FPL in July 2015. He had until August 10, 2015 to report this increase in income. He failed to report this change. Had this change been reported correctly, the change would have gone into effect the following month, September 1, 2015. This failure to report caused a FS overpayment for September and October 2015. I note that the agency correctly calculated this overpayment based on the petitioner's actual income. The overpayment amount was offset by the amount of benefits that the petitioner was eligible to receive given his income and expenses those months.

The petitioner argued that he did not know that he needed to report. The agency sent the petitioner two separate notices stating that he had to report an increase in income. One notice had the 130% FPL reporting requirement. The other notice had a 100% FPL reporting requirement for medical benefits. The agency gave the petitioner every benefit of the doubt and only assessed a FS overpayment using the FS reporting requirements. This is correct. It is the petitioner's responsibility to read and understand the notices sent to him.

The petitioner also argued that he was a seasonal employee. As a seasonal employee he thought that his yearly income should be divided by 12 to determine his monthly gross income. Although the petitioner may work more in the summer, he is not a contractual employee under the FS regulations. The FS manual and regulations only have an exception for contractual pay. The manual states, "contractual income that is the food unit's annual income (intended to provide support for the entire year), and is not paid on an hourly or piece work basis, should be prorated over 12 months." *FSWH* § 4.3.2.1. Otherwise, income is counted as earnings in the month received. *Id.* Further support of this is that the petitioner receives unemployment benefits when he is not working. Contractual employees, like teachers, do not receive unemployment benefits when they do not work in the summer.

CONCLUSIONS OF LAW

The agency correctly established a FoodShare (FS) overpayment in the amount of \$241, under claim number [REDACTED], for September and October 2015.

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.

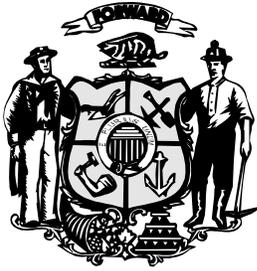
APPEAL TO COURT

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 18th day of April, 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 April 18, 2016.

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