



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/173871

PRELIMINARY RECITALS

Pursuant to a petition filed April 25, 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 May 25, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency correctly established a FoodShare (FS) overpayment in the amount of \$4,920 from March 1, 2014 to June 30, 2015 due to client error.

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. The petitioner is a household size of two.
2. On February 6, 2014 the petitioner's significant other applied for FoodShare (FS) benefits. He reported that he and the petitioner purchase and prepare meals together. The petitioner was added

to her significant other's FS case effective March 1, 2016. The only income reported to the agency was the petitioner's monthly gross income of \$288.30 from [REDACTED].

3. On February 13, 2014 the agency sent the household a notice stating that effective February 1, 2016 he would receive \$189 in monthly FS benefits. The benefits would increase to \$347 effective March 1, 2016. This notice stating that if the household's total monthly income (before taxes) went over \$1,681 the household must report the increase in income by the 10th day of the following month.
4. The household's monthly income was as follows:
 - a. March 2014 - \$2,289.52
 - b. April 2014 - \$1,828.74
 - c. May 2014 - \$2,145.07
 - d. June 2014 - \$2,006.52
 - e. July 2014 - \$2,775.34
 - f. August 2014 - \$4,547.08
 - g. September 2014 - \$3,679.65
 - h. October 2014 - \$6,621.62
 - i. November 2014 - \$5,796.46
 - j. December 2014 - \$4,398.64
 - k. January 2015 - \$2,014.08
 - l. February 2015 - \$3,872.71
 - m. March 2015 - \$3,804.38
 - n. April 2015 - \$3,517.45
 - o. May 2015 - \$5,970.12
 - p. June 2015 - \$5,009.47
5. The household did not accurately report the household income at the time application. In addition, the household never reported that their income was above the 130% Federal Poverty Level (FPL) reporting requirement.
6. The household completed a six month renewal form in July 2014. The household reported no change to their previously underreported income.
7. The household's monthly rent was \$875. They were responsible for all of their utilities.
8. The petitioner's significant other was also responsible for child support payments. The household did not report child support payments for March 2014 to January 2015. In February 2015 and March 2015 he paid \$701.89 in child support. In April, May, and June 2015 he paid \$696.60 in child support.
9. The household received \$4,920 in FS benefits from March 1, 2014 to June 30, 2015 that they were not entitled to receive.
10. On April 6, 2016 the agency sent the petitioner a notice stating that the household was overpaid \$4,920 in FS benefits from March 1, 2014 to June 30, 2015 due to client error.
11. On April 22, 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 household never accurately reported their household income. The only income reported and verified was from [REDACTED] at \$288.30 each month. The household originally reported employment and income from the [REDACTED], however, in February 2014 the petitioner reported that job had ended, and she had started with [REDACTED]. There was no other employment reported during this one year and three month time period. The six month report form continued to under report the household’s income. This underreporting led to the overpayment.

I have reviewed the overpayment calculations. The agency correctly calculated the household’s gross income using employment verifications from the various employers. The agency also correctly deducted the household’s eligible FS deductions, and correctly calculated the overpayment.

At the hearing the petitioner mentioned that there may have been some earlier child support payments that were not deducted. Even if that is true, that would change the overpayment amount. This household’s income is high enough that the child support deduction payment does not impact FS eligibility.

The petitioner also argued that this overpayment was a mistake, and not intentional. She testified that when she submitted paystubs, she thought it was for all of her employment. She worked for one place, but was paid by two different agencies. I note that the accurate income was also not reflected on the six month report form completed by the household. Regardless the agency agrees that the overpayment was due to client error. FS regulations direct the agency to collect all overpayments in a six year look back period caused by client error.

CONCLUSIONS OF LAW

The agency correctly established a FoodShare (FS) overpayment in the amount of \$4,920 from March 1, 2014 to June 30, 2015 due to client error.

THEREFORE, it is

ORDERED

That the petitioner 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 8th day of June, 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 June 8, 2016.

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