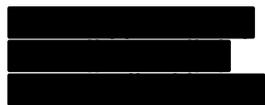




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/174345

PRELIMINARY RECITALS

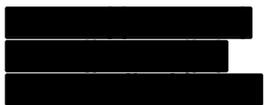
Pursuant to a petition filed May 13, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Waushara County Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on June 07, 2016, from Milwaukee, Wisconsin.

The issue for determination is whether the agency has established an overpayment of FS against the petitioner.

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: 
Waushara County Human Services
213 W. Park Street
PO Box 1230
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Waushara County and has been a recipient of FS.

2. In December 2015, petitioner correctly reported his unemployment compensation to the FS agency. The agency failed to budget that unearned income correctly.
3. At petitioner's six month review thereafter, the agency determined that it had made an error in calculating his income between December 23, 2015 and May 31, 2016.
4. On May 13, 2016 the agency issued a Notice of FoodShare Overpayment to petitioner advising of an overpayment from December 23, 2015 and May 31, 2016 in the amount of \$942 due to agency error. Exhibit 5.

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(a). 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)(emphasis added).

Here, the agency showed that it had originally calculated petitioner's income incorrectly, thus causing an FS overpayment. The agency presented the calculations to show how it determined the corrected income, as well as the correct amount of FS petitioner should have received. Petitioner did not dispute the calculations, but rather explained that he found it unfair for the agency to recover the FS when he did everything correctly. Unfortunately for petitioner I cannot change the outcome based on his fairness argument. This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977).

Based on the foregoing, I must find that the preponderance of the evidence establishes that the agency correctly calculated the FS overpayments against the petitioner.

Petitioner is reminded that he can repay the overpayment with any FS that he is currently receiving, or he can set up a repayment agreement with the agency, as failure to repay an FS overpayment can result in a tax intercept to recover the benefits.

CONCLUSIONS OF LAW

The agency has met its burden to establish that it correctly calculated an overpayment of FS against the petitioner.

THEREFORE, it is

ORDERED

The petition for review herein 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 28th day of June, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on June 28, 2016.

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