



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
[REDACTED]
FOP- 174547

PRELIMINARY RECITALS

On May 20, 2016, the above petitioner filed a hearing request under Wis. Admin. Code, § HA 3.03, to challenge a decision by the Kenosha County Human Service Department regarding FoodShare benefits (FS). The hearing was held on June 21, 2016, via telephone at Kenosha, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$583 for the period of April 1, 2015 – June 30, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services

[REDACTED]

Kenosha County Human Service
Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On January 6, 2015, the Petitioner filed a renewal application for FS benefits. The agency conducted an interview with the Petitioner. She reported that she was not working. She reported a household of three that included herself and her two sons [REDACTED] and [REDACTED]. [REDACTED] was a minor when the Petitioner applied.
3. On January 12, 2015, the agency issued a Notice of Decision to the Petitioner informing her that she would continue to receive FS benefits. The notice informed her that this was based on \$0 income. The notice further informed her that she must report to the agency by the 10th day of the next month if her gross household income exceeds \$1,310.83/month.
4. On February 2, 2015, the agency issued a Notice of Decision informing the Petitioner that she was approved to receive FS benefits in the amount of \$264 for January, 2015 and \$315/month effective February 1, 2015. The notice informed her that this was based on household income of \$1,385.19/month. The notice further informed her that she must report to the agency by the 10th day of the next month if her gross household income exceeds \$2,144/month.
5. In February, 2015, the Petitioner started employment at [REDACTED]. Her employment with [REDACTED] ended in March, 2015. Petitioner started employment at [REDACTED] and the [REDACTED] in March, 2015. [REDACTED] worked at [REDACTED] from February – June, 2015. The household received unearned income of \$945.62/month. Earned income for the household in February and March was as follows:

	[REDACTED]	Petitioner		Total
Feb. 2015	\$439.57	\$1,341 ([REDACTED])		\$1,780.57
March, 2015	\$439.57	\$527 ([REDACTED]) + \$230 ([REDACTED])		\$1,196.57

Total household income including earned and unearned income for February, 2015 was \$2,726.19 and for March \$2,142.19

6. In or about April, 2015, [REDACTED] turned 18 years of age. [REDACTED] was employed at [REDACTED]. The household continued to receive \$945.62/month in unearned income. Total gross earned income for April, May and June was as follows:

	[REDACTED]	[REDACTED]	Petitioner	Total
April, 2015	\$439.57		\$1,082 ([REDACTED]) \$ 252 ([REDACTED])	\$1,773.57
May, 2015	\$439.57	\$551.09	\$1,430 ([REDACTED])	\$2,420.66
June, 2015	\$439.57	\$551.09	\$1,374 ([REDACTED])	\$2,364.66

Total household income including earned and unearned income was as follows:

April, 2015	\$2,719.19
May, 2015	\$3,366.28
June, 2015	\$3,310.28

7. On April 13, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would decrease to \$134/month effective May 1, 2015 due to an increase in household income. The notice informed her that her FS allotment was based on gross household income of

\$1,936.28/month. The notice further informed her that she must report to the agency by the 10th day of the next month if her gross household income exceeds \$2,144.

8. On April 21, 2016, the agency issued a FS Overpayment Notice and worksheets to the Petitioner informing her that the agency seeks to recover an overissuance of FS benefits in the amount of \$583 for the period of April 1, 2015 – June 30, 2015 due to client error in failing to report income.
9. On May 20, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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 a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence.

In this case, the agency established that the Petitioner’s gross household income exceeded the reporting requirement of \$2,144/month in February, 2015. The Petitioner was required to report this change in income to the agency by March 10, 2015 to impact her benefits effective April 1, 2015. The agency provided evidence of the Petitioner’s actual household income for February, 2015 – June, 2015. The agency demonstrated how it determined the Petitioner’s overpayment.

The Petitioner did not dispute the income calculations of the agency. The Petitioner testified that she had not realized that her sons’ income counted in determining household income. I note that the notices issued to the Petitioner on February 2, 2015 and April 13, 2015 reported the income that the agency was counting in determining eligibility and allotment of FS benefits. The Petitioner did not dispute that she did not report to the agency when gross monthly household income exceeded the reporting requirement of \$2,144.

Based on the evidence presented, I conclude the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$583 for the period of April 1, 2015 – June 30, 2015.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$583 for the period of April 1, 2015 – June 30, 2015.

THEREFORE, it is

ORDERED

That the Petitioner’s appeal 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, **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 7th day of July, 2016

\s _____
Debra Bursinger
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 July 7, 2016.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability