



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 174701

PRELIMINARY RECITALS

On May 27, 2016, the above petitioner filed a hearing request under Wis. Admin. Code §HA 3.03, to challenge a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS). The hearing was held on July 6, 2016, by telephone.

The issue for determination is whether Petitioner was overissued FoodShare benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a FoodShare overpayment notice, dated April 14, 2016. It informed Petitioner that she had been overissued FoodShare in the amount of \$1296.00 during the period of January 1, 2015 through September 30, 2015.
3. The reason for the overissuance alleged here is that Petitioner had income in excess of reporting limits as of the fall of 2014, had it been reported Petitioner's FoodShare allotment would have been

reduced during the months involved here. Petitioner reported her employment but did not report gross income as required.

4. Petitioner does receive child support though the monthly amount fluctuates.
5. Petitioner’s household size is 2.
6. 130% of the Federal Poverty Level for a household of 2 was \$1705.00 at the time of the overpayment involved here. See FoodShare Wisconsin Handbook (FSH), §8.1.1 of Release 14-03.
7. Petitioner’s gross household income was in excess of \$1705.00 at all times relevant here. This was not reported to the agency.
8. Petitioner reported a bankruptcy payment at the hearing but without any more detail.

DISCUSSION

The Federal Regulation concerning FoodShare overpayments requires the State agency to take action 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, 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 CFR § 273.18(b)*; see also *FoodShare Wisconsin Handbook, App. 7.3.1.9*. Overpayments due to “client error” may be recovered for up to six years after discovery. *FoodShare Wisconsin Handbook, §7.3.2.1*.

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that were sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused FoodShare to be issued for which the client was not otherwise eligible; documentation of the benefits actually paid, Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, etc. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. See, generally, *7 CFR §273.15* and *§273.18*; *FoodShare Wisconsin Handbook, §7.3.1.8*. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals. The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

Also applicable here are the following:

7.3.2.1 Client and Non-client Error

When calculating the overissuance, consider the FS group’s reporting requirements. Do not use income or expenses, or changes in income and expenses that were not reported and were not required to be reported.

...
FSH, §7.3.2.1.



6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)

All other food units are only required to report if their total monthly gross income exceeds 130% ([8.1.1](#)) of the Federal Poverty Level (FPL) for their reported food unit size. This

change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

If a food unit has reported total income exceeding 130% FPL for their food unit size, and the food unit remains open for FS due to categorical eligibility, the food unit has fulfilled their change reporting requirement for the remainder of the FS certification period.

The 130 % FPL reduced reporting level is based on the food unit size determined at the most recently completed certification.

...
FSH, §6.1.2.2.

Petitioner testified that she worked part time, that her child support was not a consistent monthly amount and that a bankruptcy payment had to be made so she did not get the full amount of her pay.

The agency counted Petitioner’s actual child care and wages so Petitioner’s concern about part time income and inconsistent child support does not change the calculation here. Nonetheless, potentially applicable to Petitioner’s bankruptcy defense here is the following:

4.5.6.10 Vendor Payments

A vendor payment is diverted by the provider of the payment to a third party for an expense of the food unit. Vendor payments may be counted or disregarded as income. Ask, “Is the vendor payment something legally obligated to the food unit?” If yes, count the vendor payment or benefit as income.

...

Some examples of disregarded vendor payments are:

...

5. Payments specified by a court order or other legally binding agreement to go directly to a third party instead of the food unit are excluded because they are not otherwise payable to the food unit.

...
FSH, §4.5.6.10.

The rather large omnibus exhibit submitted by the agency includes 2 paychecks and those do not show a bankruptcy payment. That exhibit package also contains what appear to be payroll records from the employer and those do not show a deduction for a bankruptcy payment. I do not, therefore, find a basis for considering and addressing the issue of whether there could be a vendor payment exclusion from income.

CONCLUSIONS OF LAW

That the evidence is sufficient to demonstrate that Petitioner was overissued FoodShare as alleged.

THEREFORE, it is

ORDERED

That this 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 _____ day of July, 2016

\s _____
David D. Fleming
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 25, 2016.

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