



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

In the Matter of



DECISION
Case #: FOP - 174799

PRELIMINARY RECITALS

Pursuant to a petition filed on June 2, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Outagamie County Department of Human Services regarding FoodShare benefits (FS), a hearing was held on August 9, 2016, by telephone.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$267 from the Petitioner for the period of February 1, 2016 – April 30, 2016 due to an agency error.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: 

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Outagamie County.

2. On or about December 28, 2015, the agency requested income verification from the Petitioner via telephone. On December 29, 2015, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of employment and income at [REDACTED]. The due date for the information was January 7, 2016.
3. On January 7, 2016, the Petitioner submitted pay statements dated December 17, 2015 and December 31, 2015. For the pay period of November 29, 2015 – December 12, 2015, the Petitioner had gross wages of \$1,066.55. For the pay period of December 13, 2015 – December 29, 2015, the Petitioner had gross wages of \$910.79.
4. On January 18, 2016, the agency issued a Notice of Decision to the Petitioner informing her that she was approved to receive FS benefits of \$105/month, effective February 1, 2016. The notice further informed her that this was based on gross monthly income of \$1,667.62 from [REDACTED].
5. On April 5, 2016, a phone review was conducted with the Petitioner. Income verification was again requested.
6. On or about April 14, 2016, the Petitioner submitted income verification. On April 19, 2016, the agency issued a Notice of Decision informing the Petitioner that her FS benefits would be decreased to \$16/month effective May 1, 2016. The notice further informed her that this was based on gross monthly income of \$2,198.69 from [REDACTED].
7. On April 19, 2016, the Petitioner contacted the agency inquiring why her FS benefits had decreased. A worker reviewed the case. At that time, a worker determined the agency had incorrectly processed the Petitioner's income in January, 2016.
8. During the relevant time period, the Petitioner received unearned income of \$291.66/month. Her rent expense was \$500/month plus utility expenses.
9. On May 6, 2016, the agency issued a FS Overpayment Notice to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$267 for the period of February 1, 2016 – April 30, 2016.
10. On June 2, 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), emphasis added; see also, FoodShare Wisconsin Handbook, Appendix §7.3.2.1. 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. §§ 7.3.2.1 – 7.3.2.2.

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

In this case, the agency concedes that it erred in calculating the Petitioner's gross monthly income in January, 2016 when the Petitioner's review took place. This error was discovered in April, 2016 when the next review was taking place. The agency testified that the Petitioner's gross pay from the December, 2015 pay statements was \$1,977.34 (\$1,066.55 + 910.79). The agency averaged this income for an average weekly income of \$494.34 (\$1,977.34/4) and multiplied it by 4.3 weeks/month for an average

gross monthly income of \$2,125.64. The agency worker in January had incorrectly calculated gross monthly income of \$1,375.96. The agency submitted worksheets demonstrating how it determined the overpayment based on the corrected earned income.

The Petitioner did not dispute the income earned in December or how the agency re-determined her corrected income for December, 2015. The Petitioner testified that there was no deliberate action on her part to mislead the agency regarding her income. She also testified that she had contacted the agency several times because she did not feel her income had been calculated correctly. The Petitioner stated that she wanted some accountability by the worker who made the mistake.

As noted above, the FS regulations require the agency to recover any overpayments within the previous 12 months even if the error resulting in the overpayment was made by the agency. There is no dispute that the overpayment in this case was agency error and there were no actions by the Petitioner that resulted in the error or overpayment. The agency error was discovered three months after the error occurred and the agency took action to recover the overpayment within five months of the error. Therefore, the agency is required and authorized by law to recover the overpayment that resulted from its error.

I reviewed the agency's overpayment calculations and I find no error. The Petitioner did not present any evidence of an error in the overpayment calculations. Therefore, I conclude that the agency may recover an overpayment of FS benefits in the amount of \$267 from the Petitioner for the period of February 1, 2016 – April 30, 2016.

CONCLUSIONS OF LAW

The agency may recover an overpayment of FS benefits in the amount of \$267 from the Petitioner for the period of February 1, 2016 – April 30, 2016.

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 30th day of August, 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 August 30, 2016.

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