



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 174803

PRELIMINARY RECITALS

Pursuant to a petition filed on June 3, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services regarding FoodShare benefits (FS), a hearing was held on August 30, 2016, by telephone.

The issue for determination is whether Petitioner was overissued FoodShare.

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]
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner and her spouse were both sent FoodShare overpayment notices dated May 13, 2016 that informed them that they had been overissued FoodShare for the period of November 2012

through September 30, 2013 in the amount of \$4898.00. The reason for the overissuance was that income was not reported when it exceeded reporting requirements.

3. A November 16, 2012 notice was sent to Petitioner and stated that income before taxes in excess of \$2250.83 had to be reported to the agency by the 10th of the following month.
4. Petitioner's FoodShare household size was 5 people during the time period of the overpayment.
5. The FoodShare income reporting threshold between reviews and six month report forms is 130% of the Federal Poverty Level (FPL). For a group of 5 the FPL as of October 1, 2012 was \$2927.00.
6. Petitioner's household income was in excess of the 130% of FPL in all months here except February and March 2013.

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 is the following:

6.1.1.2 Change Reporting for All Other Food Units *[i.e. households consisting of all elderly, blind or disabled members]*

All other food units are only required to report if their total monthly gross income exceeds 130% 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.

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.

However, if any change is reported, or becomes known to the agency it must be acted upon.
FSH, §6.1.1.2; effective 10/15/04.

Petitioner and her spouse appeared for the July 14, 2016 hearing but he represented both at the August 30 hearing. After having had a chance to review all of the records the couple was no longer contesting the overpayment but did not think it fair that this has come up 3-4 years after the overpayment. While that frustration is understandable I can only note that Federal regulation permits recovery of overpayments back for 6 years unless it is caused by an agency error. *See Code of Federal Regulations (CFR) at 7 CFR 273.18(b) and FSH, §7.3.2, generally.* The Division of Hearings and Appeals has no authority to expand or reduce this federally directly time limit.

I have review the overpayment calculation and find that the reporting requirement was higher than noted in the November 16, 2012 notice but that does not have an affect here. Further, the agency correctly used actual income in calculating the overpayment including for the months of February and March 2013. The overpayment was not for full benefits in each month but for the difference between those benefits received and those for which the household was eligible.

Finally, for Petitioner's benefit the following from the FSH describes repayment provisions:

7.3.2.12 Repayments

A member who makes a repayment agreement may not be subject to tax intercept as long as he or she is meeting the conditions of the agreement. If a member's repayment agreement becomes delinquent, which is defined as three missed payments over the life of the debt and has been sent three dunning, or past due, notices, he or she is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments.
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

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 1st day of September, 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 September 1, 2016.

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