

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County. She received FS in Wisconsin from at least September 2015-February 2016.
2. The petitioner was employed with [REDACTED] from approximately October 1, 2015 –April 30, 2016. Exhibit 2.
3. On September 9, 2015 the agency issued a notice to petitioner showing that the agency was not budgeting any income for her, and what her reporting requirements were. Exhibit 1.
4. In February 2016 petitioner reported her income from [REDACTED] to the agency.
5. On June 20, 2016 the agency issued a notice of FS overpayment to the petitioner stating that it calculated an overpayment of FS against the petitioner for the period of December 1, 2015-February 29, 2016 in the amount of \$582 (claim # [REDACTED]) due to failing to report income.

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(c). 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 or even if the client error was unintentional. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, §7.3.1.2 To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

Under FS rules, an FS household needs to report increased income when the new income causes total household income to rise above 130% of the federal poverty level. FS Handbook, §6.1.1.2. This reporting requirement was provided to petitioner in the September 9, 2015 notice.

According to the evidence, the total income for Petitioner's household exceeded 130% of the FPL in October 2015. This then had to be reported by November 10th, which would then have reduced or discontinued Petitioner's FoodShare benefits. Petitioner did not dispute the income the agency used and I find no error in the calculations. As such, I must find that the agency met its burden to show that an overpayment exists. I find no exception to this.

The record was held open post-hearing because petitioner testified that she had called the agency to report her income prior to the February 2016 date. However, in FS cases, even if she had reported it, and the agency failed to budget it correctly, the overpayment is still recoverable per the federal regulations cited above.

Petitioner may want to contact the Public Assistance Collection Unit (PACU) to find out if they will set up a repayment schedule, or if she is currently receiving FS the overpayment can be recouped from any current benefits. According to their website, the current telephone number for the PACU is 1-800-943-9499.

I add, assuming petitioner finds this decision unfair, that 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). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency has met its burden to establish that it correctly calculated an overpayment of FS against the petitioner for the period of December 1, 2015-February 29, 2016 in the amount of \$582 (claim # [REDACTED]).

THEREFORE, it is ORDERED

That the petition for review herein be 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 9th day of August, 2016

\s _____
Kelly Cochrane
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 9, 2016.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability