



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/144626

PRELIMINARY RECITALS

Pursuant to a petition filed October 17, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on November 21, 2012.

The issue for determination is whether the petitioner is liable for an FS overpayment caused by agency error.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Bob Uebele

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Clark County, and is the primary person in a FS assistance group of two.

2. Petitioner submitted a Six Month report Form (SMRF) on November 9, 2011, wherein she noted that she had started working at [REDACTED] in September of 2011.
3. Despite receiving this information, income from petitioner's employment with [REDACTED] was not added to her FS budget by respondent at that time.
4. Respondent noted its error during petitioner's annual FS review in May, 2012, and issued a Notice of FoodShare Overissuance and Overpayment Worksheets to the petitioner in October, 2012. The notice identified an agency error overpayment of FS benefits in the amount of 1,315.00 during the period of December 1, 2011 through May 31, 2012.
5. Petitioner timely appealed the overpayment determination on October 17, 2012.

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*. 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.

The calculation of the overpayment was not disputed by Petitioner. Instead, she argues that the error was not her fault, and that she has always complied with FS verification and reporting rules. Since the error was the result of the agency's action (or failure to act), the overpayment is limited to the 12 month period preceding discovery of the error. FS Handbook, § 7.3.2.1. Respondent reports that it discovered its error in May of 2012; therefore, the overpayment period could not commence until May of 2011. As determined by the respondent, the overpayment period did not commence until December of 2011, which means that the overpayment period is in compliance with FS regulations concerning agency errors.

Although the error was not made by petitioner, federal law requires that she repay it. Petitioner testified that she has no way to repay the amount, but the Division of Hearings and Appeals does not have authority to forgive a debt due to hardship. The only issue before me is whether the agency correctly established the claim, and I must conclude that it did.

CONCLUSIONS OF LAW

The county correctly determined that petitioner was overpaid FS from December 1, 2011 through May 31, 2012.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 30th day of November, 2012

\sPeter McCombs
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 November 30, 2012.

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