



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/143821

PRELIMINARY RECITALS

Pursuant to a petition filed September 13, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 11, 2012, at Madison, Wisconsin.

The issue for determination is whether the respondent correctly determined that petitioner was overpaid FS during the period of September 1, 2011 and July 1, 2012, in the amount of \$4,099.00.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Michelle Furr

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Peter McCombs

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. Respondent seeks to recover \$4,099.00 in FoodShare benefits provided to the petitioner from September 1, 2011, to July, 1, 2012, as a result of petitioner’s error in under-reporting her income.
3. The petitioner is employed at the Central Wisconsin Center, operated by the State of Wisconsin, Department of Health Services. During the period of September 1, 2011 and July, 1, 2012, she was employed part time, and worked 20 hours per week. Petitioner’s base pay rate was 15.469. Exhibit C.
4. Petitioner is enrolled in college, and participates in a tuition reimbursement benefit offered by her employer. The reimbursement program is based upon petitioner’s income and grade point average. Petitioner’s employer used to provide a separate check, but now the reimbursements are included in her paycheck.
5. Petitioner has regularly provided income and employment verification via correspondence from her employer. Exhibit A. Petitioner has not provided pay stubs as verifications; respondent testified that letters from petitioner’s employer are acceptable forms of verification.

DISCUSSION

FoodShare benefits are determined by net income and the size of the household. When respondent determined the petitioner’s FS allotment, it did not count the education reimbursement provided by petitioner’s employer. When her employer’s educational benefits were added to petitioner’s pay checks, the increased income was noted by respondent via a State Wage match. Respondent argues that, since this educational reimbursement is taxed and is paid as part of petitioner’s wages, it constitutes income and should be counted. Based upon that premise, respondent concludes that it provided her household with \$4,099.00 more in FS benefits from September 1, 2011, to July, 1, 2012, than it was entitled to. It now seeks to recover this overpayment.

The petitioner objects because she reported her income correctly. Respondent concedes that the letters received from petitioner’s employer were acceptable forms of verification.

Federal regulations require state agencies to “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. However, these regulations first require that an overpayment actually occurred. I conclude that in the present case, the respondent has erred in establishing an overpayment.

The Wisconsin Food Share Handbook provides as follows:

4.3.4.3 Disregarded Unearned Income
Disregard the following income:

...

Employment Training and Education:

...

2. Disregard educational expense reimbursements.

Wisconsin FS Handbook, §4.3.4.3. Pursuant to the un-refuted testimony provided by the petitioner, the increased income which led to the overpayment determination was educational expense reimbursement. Whether or not that was provided in a separate check or included with her regular earnings is immaterial to §4.3.4.3. Including educational expense reimbursement in wages does not alter its function, intent, or identity.

Respondent testified that the petitioner received additional, taxable, income for education costs, which constituted unreported income; the failure to report said income caused the overpayment. Respondent stated that pursuant to the Wisconsin FS Handbook § 4.3.2.1, all wages are counted as income. I do not agree, and as Wisconsin FS Handbook § 4.3.4.3 specifies, certain unearned income is to be disregarded. I conclude that respondent has not established an overpayment in the present case since it failed to disregard petitioner's educational expense reimbursements pursuant to Wisconsin FS Handbook § 4.3.4.3.

CONCLUSIONS OF LAW

1. Petitioner's educational expense reimbursements are deemed disregarded unearned income.
2. Respondent failed to disregard petitioner's educational expense reimbursements, and thereby incorrectly assessed an FS overpayment to petitioner.

THEREFORE, it is

ORDERED

That this matter be remanded to the respondent to rescind the overpayment assessed per Claim No. [REDACTED], in the amount of \$4,099.99.¹ This action shall be completed within 10 days following issuance of the Decision.

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.

¹ Respondent noted at hearing that a \$2.00 mathematical error was discovered in the calculation of the overpayment. As such, the actual amount of the alleged overpayment is \$4,097.00. In light of the Order to rescind the overpayment claim, this decision does not reach the calculation of the overpayment.

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 7th day of November, 2012

Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 7, 2012.

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