



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/144721

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Washburn County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on December 18, 2012, at Shell Lake, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of FoodShare that occurred because the agency incorrectly kept providing FoodShare to her after she allegedly missed her review.

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: Rosanne Livingston

Washburn County Department of Social Services
110 W 4th Avenue
PO Box 250
Shell Lake, WI 54871

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Washburn County.

2. The county agency seeks to recover \$4,872 provided in FoodShare to the petitioner from August 2011 through March 2012 because she allegedly failed to complete her review.
3. The agency did not provide any evidence that it notified the petitioner of her review.

DISCUSSION

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. FoodShare recipients are usually certified for 12 months. To be recertified and continue receiving FoodShare benefits they must complete a review and verify current household information in the last month of the certification period. *FoodShare Wisconsin Handbook*, § 2.2.1. If they do not complete the review by this time, their FoodShare case will close. *Id.*, § 2.2.1.4. Recertification involves several steps, the first of which is that “[n]otification must be sent to the recipient informing him/her that the certification period is ending and an interview ([2.1.3](#)) must be conducted if benefits are to continue.” *Id.*, 2.2.1.3.

The county agency contends that the petitioner missed the 12-month review scheduled for July 2011. It contends that it then incorrectly continued providing FoodShare to her for the next eight months. It seeks to recover the entire \$4,872 it paid her in this period. The flaw in agency’s case is that it did not submit any documentation showing that it completed the first step of the recertification process, which is to notify her of the review. Because it has not sufficiently proved that it notified her of the review, it cannot find her ineligible for failing to complete it.

I note that it is questionable whether the agency could have recovered this overpayment if it did establish that it had notified the petitioner of the review. Agencies are instructed when determining an overpayment to “[o]nly use the income and expenses reported or required to be reported for each month of the adjustment period.” *FoodShare Wisconsin Handbook*, § 7.3.2.1. This is based on the simple premise that the less money a person has at any particular time, the less she can spend on food. At least one decision has found that this means that when determining an overpayment, the agency should base that overpayment on the recipient’s actual income during the overpayment period. *See FOP/144490*. Although the petitioner’s actual income during this period has not been documented, it does not appear that it is significantly different than it had been during the previous year.

CONCLUSIONS OF LAW

The county agency cannot recover the alleged overpayment of FoodShare because it has not adequately proved that it notified the petitioner of her annual review.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it remove from the petitioner’s record any finding that she was overpaid FoodShare from August 2011 through March 2012.

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 4th day of January, 2013

\sMichael D. O'Brien
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 January 4, 2013.

Washburn County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability