



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/145544

PRELIMINARY RECITALS

Pursuant to a petition filed November 20, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on December 26, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly determined an overissuance of FoodShare to petitioner in the amount of \$686 based on client error.

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: Mary Hartung
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was a recipient of FoodShare benefits in 2012.

3. On May 2, 2012, the agency erroneously ended employment for petitioner and began granting a full allotment. Petitioner's employment did not actually change during any of the time pertinent to this appeal.
4. On June 29, 2012, petitioner completed a Six Month Report Form in which he indicated employment at [REDACTED]. Petitioner did not enter any values in the boxes for "rate of pay," or "hours worked per pay period."
5. From June 1, 2012 until September 30, 2012, the agency did not budget any income for petitioner and granted a full FS allotment. Petitioner was actually working at this time at [REDACTED] as he has been all along.
6. In August or September 2012, the agency identified an inconsistency with a state wage record that indicated income for petitioner. The agency determined an overpayment from June 1, 2012 to September 30, 2012 in the amount of \$686. The agency sent notices to petitioner indicating this overpayment.
7. Petitioner filed a timely appeal.

DISCUSSION

In this case, petitioner concedes that the Department overissued FS benefits. He stated that he understands that the agency calculated the allotment thinking that he was not working. He takes particular issue with the fact that the agency designates this as a client error. This would not matter if blame were the only issue, as there clearly was an overpayment. But, the agency representative stated at the time of the hearing that the amount of the overissuance may be different than \$686 if this is determined to be an agency error. I find that the entire overissuance is an agency error.

The agency concedes that the June allotment was overissued due to an error by the agency. But, the agency argued at the hearing that the other two months are client error because petitioner failed to include income rate and hours on the SMRF (see exhibit #3). But, petitioner did indicate that he was employed at [REDACTED]. Common sense must lead to a conclusion by the agency that there is some income. Furthermore, the SMRF is ambiguous. It first asks whether there have been any changes in rate of pay or hours. Petitioner checked "no." At hearing he testified that he checked that there were no changes because his income remained the same as it had previously been. He thought he did not have to then proceed to include the same figures that had previously been provided. This makes sense. His interpretation of the form is reasonable. If the Department requires that a person first state that there are no changes, and then also include the rate and hours that have been previously reported, it should so state on the form. Most forms I have encountered that ask if there have been changes to addresses, etc. only ask for the information **if there has been a change**. Because petitioner's interpretation of the requirements as written on the SMRF is reasonable, and because the agency appears to have ignored petitioner's identification of his unchanged employment at the restaurant, I find that the entire overissuance is agency error.

CONCLUSIONS OF LAW

Any overissuance of FS from 6/1/12 to 9/30/12 was agency error.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and its county agent to redetermine the amount of the overpayment from 6/1/12 to 9/30/12 **given that the cause of the overissuance was agency error**. New notice of overissuance should be provided to petitioner with new rights to appeal. These actions shall be completed within 10 days of this 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.

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 8th day of January, 2013

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 8, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability