



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/145824

PRELIMINARY RECITALS

Pursuant to a petition filed December 07, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Fond Du Lac County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on January 18, 2013, at Fond Du Lac, Wisconsin.

The issue for determination is whether petitioner was overpaid FS benefits during the time period of March 1, 2012, through October 31, 2012.

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: Deb Bohlman

Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935 -4595

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. On or about January 9, 2012, petitioner notified respondent that her son was residing in her household. Exhibit 3, p. 12.

3. Petitioner submitted a Six Month Report Form (SMRF) dated March 19, 2012. This was date-stamped April 18, 2012, by 'Centralized Document Processing Unit.' Petitioner's March/April SMRF identified no change in her rate of pay (\$8.65/hr) or hours worked (50 hrs per pay period). Exhibit 3, p. 24.
4. Petitioner's employer reported to respondent that petitioner earned \$3,902.32 in January 2, 2012, and \$2,513.34 monthly from February 1, 2012, through October 18, 2012. Exhibit 3, p. 2.
5. On petitioner's March/April SMRF, petitioner hand wrote that her rent was \$600.00. Exhibit 3, p. 23.
6. Petitioner's employer reported to respondent that petitioner's monthly rent was \$800. Petitioner's employer is also her landlord. Petitioner's employer also reported that rental payments were deducted from petitioner's paycheck at the rate of \$400.00 per pay check. Exhibit 3, p. 2.
7. On October 29, 2012, respondent wrote to petitioner to advise her that, effective November 1, 2012, she would no longer be enrolled in FoodShare due to income exceeding the program limit.
8. On November 8, 2012, respondent issued a Notification of FS Overissuance to petitioner (Claim No. [REDACTED]) informing that she was overissued FS benefits in the amount of \$503.00 from March 1, 2012, to October 31, 2012, due to client error in failing to report earned income. (Exhibit 1).
9. On December 7, 2012, petitioner filed an appeal with the Division of Hearings & Appeals. Exhibit 1.

DISCUSSION

The federal regulation concerning FS overissuance requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non - client error"). 7 C.F.R. § 273.18(b), see also *FoodShare Wisconsin Handbook* (FSWH), § 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See 7 C.F.R. § 273.18(b); see also *FSWH* § 7.3.1.9. Overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. *FSWH* § 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

"Most FoodShare groups are considered categorically eligible if their gross income is at or below 200%" of the federal poverty level. *FSWH* § 4.2.1.1. The only exceptions to this rule are for those with felony drug convictions or who have been found to have committed an intentional policy violation of the program. *Id.* Earned income is counted for the purpose of determining FS eligibility and allotments levels. *FSWH* § 4.3.2. Unearned income is also counted. *Id.*, § 4.3.4.1. A standard deduction of \$149.00 is applied to all household income for a household of 1 to 3 people. *Id.*, § 4.6.2. The earned income deduction is 20%. *Id.*, § 4.6.3. These two items are deducted from gross income to arrive at adjusted household income. Shelter and utility expenses in excess of 50% of that adjusted household income are deducted. *Id.*, § 4.6.7. Also see 7 CRF 273.10 generally regarding budgeting calculations. Finally, the allotment applicable to a household is then reduced by 30% of the household's net income. 7 CFR 273.10(e)(2)(ii)(A).

The agency may use income received during the last 30 days as an indicator of the income that is and will be available to the household during the certification period, unless that income does not accurately reflect changes in income that have occurred or are anticipated to occur. The agency may also use statements from employers or an employment verification form to verify prospective income. *FSWH* § 1.2.4.2.

The maximum FS allotment amounts, based on household size, are listed at FoodShare Wisconsin Handbook, § 8.1. In general, a household must *initially* pass the so-called “gross income limit”. The FS eligibility calculation process allows for certain deductions from gross income to arrive at a “net income” then tested against a “net income limit”. But this process only occurs if the household *first* passes the gross income test. If the applying household does not pass the gross income test, then the net income test and the applicable deductions are not even reached.

The gross income limit test does not apply to households with elderly or disabled members. FoodShare Wisconsin Handbook. “Disabled” means that the applicant is receiving one of the following: Supplemental Security Income (SSI) or Disability Insurance Benefits (DIB) from the Social Security Administration; interim assistance pending a SSI or DIB application from the Social Security Administration; SSI-State Supplement benefits from the State in which he or she resides; Veteran’s Administration benefits of certain types; retired federal workers receiving disability payments; and railroad workers receiving an annuity under the Railroad Retirement Act of 1974. See, 7, C.F.R. § 271.2 *Definitions. Elderly or disabled member* , at §§ (1-11); see also, 7 C.F.R. § 273.9(d)(3). *Id.*

In this case, petitioner’s son receives SSI benefits, and thus the gross income limit test does not apply to petitioner’s FS household; in its place the net income limit applies to the determination of petitioner’s income eligibility for FS benefits. A notice dated January 10, 2012, which was issued shortly after petitioner informed respondent that her son was living with her, specified that petitioner’s gross income was \$1,711.66, and her counted income was \$1,226.00. The counted (net) income limit is \$1,261.00. See, FoodShare Handbook, § 8.1.1, and Exhibit 3, p. 19. The January 10, 2012 notice informed petitioner that, “[i]f your household’s total monthly income (before taxes) goes over \$1,594.00, you must report it by the 10th day of the next month. *Id.* at p. 20.

In her March/April, 2012, SMRF petitioner indicated that there had not been a change in her rate of pay or in the hours worked. This is contradicted by petitioner’s testimony at hearing, as well as by petitioner’s employer’s reporting of her wages. Petitioner’s employer reported that petitioner earned \$3,902.32 in gross wages for January of 2012, which is substantially above the \$8.65/hour (per 50 hour pay period) reported on petitioner’s March/April SMRF. See, Exhibit 3, pp. 2 and 24. Petitioner’s employer further indicated, however, that petitioner’s gross monthly income for the months of February through October, 2012, was \$2,513.34. Exhibit 3, p. 2. Again, this is well over petitioner’s reported hourly pay per 50 hour pay period.

Petitioner explained at hearing that she did not intentionally provide lower-than-actual income figures, and that she did not report her change from hourly to salaried pay because she didn’t consider it an increase in income. She also stated that she thought that she had updated her rent information on the SMRF, and felt that, since her rent is deducted from her paycheck, that amount should not be counted as income. Household income includes all income from any source unless FoodShare regulations specifically exclude it. 7 CFR § 273.9(a)(b). I have reviewed the pertinent regulations, and do not find any such allowed deduction.

Even if I were to give petitioner full benefit of the doubt, and remand this matter to the respondent to reconsider based upon the information provided by petitioner’s employer in its December 17, 2012 correspondence (See, Exhibit 3, p. 2), my calculations indicate that petitioner’s net income still would have exceeded program limits during the months of March through October, 2012:

Income	\$2513.34	(Petitioner)
	<u>\$ 781.78</u>	(Petitioner's son - SSI)
Gross Income	\$3295.12	
Standard credit	(\$ 149.00)	
Earned Income	<u>(\$ 659.02)</u>	(20% of Gross Income)
Adjusted Gross	\$2721.10	
Shelter and Utilities	<u>(\$ 0)</u>	(shelter (\$800) and utilities (\$442) are \$1242. 50% of the Adjusted Gross is \$1360.55; 1242-1360.55= -118.55)
Net Income	\$2721.10	
Net Income Limit	\$1226.00	

Petitioner argued that her rent should be deducted from her income, but I fail to see any difference between rent automatically deducted from her paycheck after taxes, and rent paid by check after a paycheck is deposited into her checking account. As such, I find that the record demonstrates that petitioner was overpaid FS benefits between March 1, 2012, and October 31, 2012, in the amount of \$503.00, for which she is liable.

CONCLUSIONS OF LAW

Petitioner was overissued \$503.00 in FS benefits between March 1, 2012, and October 31, 2012, which are subject to recovery.

NOW, THEREFORE, it is ORDERED

Petitioner's appeal is 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 31st day of January, 2013

\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 January 31, 2013.

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