



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/145952

PRELIMINARY RECITALS

Pursuant to a petition filed December 13, 2012, under Wis. Admin. Code, §HA 3.03, to review a decision by the Wood County Human Services to recover FoodShare benefits (FS), a hearing was held on January 8, 2013, by telephone.

The issue for determination is whether petitioner failed to report income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Beulah Garcia
Wood County Human Services
P.O. Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. From 2010 into 2012 petitioner received FS for a household of four. In late 2009 petitioner began to receive \$2,800 monthly from an injury settlement involving her husband. Petitioner did not report receipt of the income because she was told that it was not taxable.
3. The agency discovered the income in 2012 and FS were closed. Then, by notices dated November 15, 2012, the agency informed petitioner that she was overpaid a total of \$21,761 in

FS from January, 2010 through October, 2012, claim nos. [REDACTED] [REDACTED] and [REDACTED]

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, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

If the \$2,800 per month income had been counted petitioner would not have been eligible for FS during the period in question. Petitioner testified that the payments were meant to be subsidies to her for taking care of her husband following the injury. Such payments would have to be reported for FS purposes. The general rule for FS is that income is counted unless specifically exempt. 7 C.F.R. §273.9(b). The monthly payments paid to petitioner are not excluded in the list set out at 7 C.F.R. §273.9(c). On the other hand, private disability payments and payments received to care for others are counted as income. See 7 C.F.R. §273.9(b)(2); FS Handbook, App. 4.3.4.2, nos. 9 and 15. Such income is counted even if is not taxable. See Handbook, App. 4.3.4.2, no. 15.

It is unfortunate that petitioner was given the wrong impression concerning the payments by the attorney, but had she mentioned the payments to her economic support worker the overpayment would not have been as large as it is. Because the law requires the agency to recover overpayments regardless of whose error caused them, I must conclude that the claim was imposed correctly.

Petitioner wrote that she cannot afford to repay the claim. However, at this point the only issue before the Division of Hearings and Appeals is whether the claim was correct. Payment issues must be handled through the Department's collection unit.

CONCLUSIONS OF LAW

Petitioner was overpaid FS because she failed to report \$2,800 per month income from an injury settlement.

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 14th day of January, 2013

\sBrian C. Schneider
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 14, 2013.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability