



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/146198

PRELIMINARY RECITALS

Pursuant to a petition filed December 24, 2012, under Wis. Admin. Code, §HA 3.03, to review a decision by the Northern Income Maintenance Consortium to recover FoodShare benefits (FS), a hearing was held on February 19, 2013, by telephone. The record was held open 14 days to allow petitioner to respond after receiving the overpayment calculations; no response was received.

The issue for determination is whether the agency correctly determined an FS overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Beulah Garcia
Northern IM Consortium
10610 Main St., Suite 224
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Lincoln County.
2. Petitioner and his wife received FS during the period may, 2010 through September, 2012. The FS were based upon self-employment income reported by the couple.
3. In 2012 the county agency worker discovered that employment income had been reported by First Weber for both petitioner and his wife since December, 2009 for petitioner's wife and December, 2010 for petitioner. Petitioner's wife was paid \$500 per month to be the office manager, and

petitioner was paid \$100 per month to do cleaning. Those employment incomes had not been budgeted for FS purposes.

4. The county referred the case to O'Brien and Associates, which calculated an overpayment based upon the unbudgeted income. By a notice dated November 28, 2012, the agency informed petitioner that he was overpaid \$4,523 in FS from May through December, 2010 (claim no. [REDACTED]), \$33 in 2011 (Claim no. [REDACTED]), and \$271 in 2012 (claim no. [REDACTED]).
5. The agency erred in calculating the overpayment. It used the wrong years' self-employment income.

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).

Petitioner testified that he thought he told his worker about the income. However, a review of case notes and notices sent shows no mention of the employment income, as opposed to the self-employment, during the entire three-year period. Notices of Decision reporting FS amounts included a list of income sources; they showed self-employment, but not First Weber employment income. Furthermore, even if the income had been reported there still would be an overpayment because FS must be recovered regardless of who made the error. I find, however, that the employment was not reported simply because there is no evidence at all that it was reported.

The issue then is whether the overpayment was calculated correctly. I reviewed the calculations and found errors. First, the agency used the 2010 self-employment tax return to determine the 2010 overpayment. It should have used 2009 tax return. Similarly, it utilized the 2011 tax return to determine the 2011 overpayment; it should have used the 2010 return. The result likely will be a much smaller overpayment in 2010 and a larger one in 2011. Second, the agency gave the full earned income deduction in calculating the overpayment. It should not have given the deduction for unreported earned income. See 7 C.F.R. §273.18(c)(1)(B); Handbook, App. 7.3.2.1. It also appears to have at least one FS allotment wrong and did not account for business use of the home.

I will remand the matter to the county with instructions to recalculate the overpayment with the finding that petitioner failed to report the \$600 per month employment income as described above. If petitioner disagrees with the new calculations he can file a new appeal.

CONCLUSIONS OF LAW

1. Petitioner was overpaid FS because he failed to report income from 2010 through 2012.
2. The agency erred in calculation the overpayment.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to recalculate the overpayment determined in this case using correct figures with the finding that petitioner failed to report the \$600 per month employment income as described above, and to notify petitioner of the new amount. The county shall do so 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 5th day of March, 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 March 5, 2013.

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