



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/146372

PRELIMINARY RECITALS

Pursuant to a petition filed January 04, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 20, 2013, at Alma, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare that occurred because of the agency's 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: Bob Euble

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Buffalo County.
2. The petitioner received FoodShare benefits from March 1, 2011, through February 28, 2012. During this period the FoodShare agency allowed her a larger excess medical expense deduction

than she was entitled to by incorrectly counting the amount she paid for her health insurance premium twice. It discovered this error on June 29, 2012.

3. The agency seeks to recover \$345 of the FoodShare provided to the petitioner from June 1, 2011, through February 28, 2012.

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. Federal rules require FoodShare agencies to recover claims back at least one year from when the alleged overpayment was discovered. 7 CFR § 273.18(c)(1). When an overpayment occurs because of the agency’s error, Wisconsin policy instructs the agency that the “overpayment period... begins with the month the error is discovered and extends back 12 months or when the error was effective, whichever is most recent.” *FoodShare Wisconsin Handbook*, § 7.3.2.1.

The amount of a FoodShare allotment depends upon net income and the number of persons in the household. Net income is determined after subtracting those deductions —and only those deductions— found in 7 CFR § 273.9(d) from gross income. Among the allowable deductions is the medical deduction available for those whose verified medical expenses exceed \$35 per month. 7 CFR § 273.9(d)(3); *FoodShare Wisconsin Handbook*, § 4.6.4.1. The FoodShare agency seeks to recover \$345 of the FoodShare provided to the petitioner from June 1, 2011, through February 28, 2012, after it discovered on June 29, 2012, that it had double-counted her insurance premium when determining her excess medical deduction.

The petitioner, who was represented by Elderly Benefits Specialist Jan Priefert, does not challenge the agency’s calculations but rather contends that it is unfair to require her to repay an overpayment that was not her fault. While I understand why she is upset, I am bound by FoodShare rules, and those rules clearly require her to repay any overpayment, even if the overpayment is the agency’s fault.

CONCLUSIONS OF LAW

The petitioner must repay an overpayment of FoodShare that occurred because of the agency’s error.

THEREFORE, it is

ORDERED

The 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

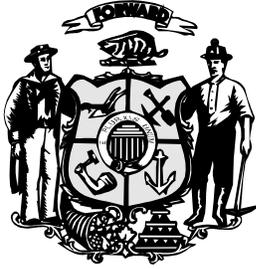
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 26th day of February, 2013

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 26, 2013.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability