



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/146423

PRELIMINARY RECITALS

Pursuant to a petition filed January 8, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Marathon County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on January 24, 2013, by telephone.

The issue for determination is whether an FS claim was determined correctly.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Maikou Yang
Marathon County Dept. of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. In 2012 petitioner received FS for himself and two children. In July petitioner reported working at [REDACTED]. The anticipated income was \$233.81 bi-weekly. However, when the income was entered by petitioner's worker it was entered as \$233.81 monthly. In addition, when August FS were calculated the budget did not include petitioner's \$653 Wisconsin Works (W-2) income.

3. The county discovered the error later in 2012. By a notice dated December 20, 2012, the agency informed petitioner that he was overpaid \$1,271 in FS from August through October, 2012, due to agency error, claim no. [REDACTED]. However, that notice overstated petitioner's income.
4. Following the hearing the county re-calculated the overpayment. The recalculation showed that petitioner was overpaid \$458 in FS during the period August 1 through October 31, 2012.

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).

It is evident that the income was understated and petitioner does not dispute that. It is undisputed that the FS were issued due to agency error. Petitioner argued simply that the error was the agency's and it was unfair to recover the error from him. The problem is that the federal law requires the agency to recover ALL FS overpayments, even those resulting from agency error.

Of course, at the hearing the error was compounded by the discovery that the overpayment claim also was done erroneously. For some reason the claim showed petitioner's monthly earned income to be \$1,637. It actually was \$467.32.

Ms. Yang corrected the errors and issued a new notice on January 28. I reviewed her changes and they are correct. The actual overpayment is \$458. Ms. Yang already made the changes in the system and it now shows that correct overpayment amount to be \$458. I thus will dismiss the appeal because the corrections have been made and there is nothing for me to order the agency to change.

CONCLUSIONS OF LAW

Petitioner was overpaid FS because the agency incorrectly budgeted his income too low, and the correct overpayment amount is \$458 for the period August 1 through October 31, 2012.

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 30th 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 30, 2013.

Marathon County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability