



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/146486

PRELIMINARY RECITALS

Pursuant to a petition filed January 10, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 07, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency is correctly seeking recovery of a FoodShare overpayment to the petitioner during the period of April 1, 2012, through September 31, 2012, due to county agency 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: Sharon Thacker

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who is a FoodShare (FS) recipient.
2. Respondent mistakenly under-budgeted petitioner's earned income. Petitioner's income was entered at \$13.00/hour for 40 hours biweekly. The correct figures were \$13.97/hour for 80 hours biweekly.
3. Following a review of petitioner's case, the county agency discovered that there had been a worker error when entering petitioner's earned income and work hours.
4. The petitioner's FS household received FS benefits during the period of April 1, 2012, through September 31, 2012.
5. The county agency sent a FS Overissuance Notice to the petitioner on December 12, 2012, stating that petitioner was overpaid FS in the total amount of \$980.00 for the period of April 1, 2012, through September 31, 2012, due to non-client error in failing to budget earned income.

DISCUSSION

The federal regulation concerning FS overpayments 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, Appendix 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 FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

During the hearing and in her correspondence requesting the fair hearing, petitioner was unable to establish any error in the calculation of the FS overpayment. The county representative admitted that the FS overpayment was entirely due to prior agency error with no fault by the petitioner. Overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Because the county discovered the petitioner's FS overpayment in October of 2012, the county may recover the FS overpayment retroactive for 12 months prior to October, 2012.

During the hearing, petitioner argued to seek recovery of the non-client overpayment was unfair because the FS overpayment was not petitioner's fault, as it was caused entirely by agency error. The petitioner's contention is understandable. The petitioner also explained that it will be a financial hardship to repay the FS overpayments. However, since the April 1, 2012, through September 31, 2012, FS overpayment was created during the 12-month period preceding discovery, controlling federal regulation requires establishment of a claim against a household for a FS overpayment **regardless of whose error caused the overpayment to occur**: "The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . . "7 C.F.R. § 273.18(a); see also FoodShare

Wisconsin Handbook, 7.3.2.1. Accordingly, for the above reasons, the county agency is correctly seeking recovery of a FoodShare overpayment to the petitioner during the period of April 1, 2012, through September 31, 2012, due to county agency error.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a FoodShare overpayment to the petitioner during the period of April 1, 2012, through September 31, 2012, due to county agency error in mistakenly under-budgeting petitioner's earned income which, when correctly budgeted, resulted in reduced FS benefits for that period for petitioner's FS household.

THEREFORE, it is

ORDERED

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

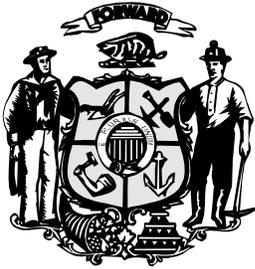
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 8th day of March, 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 March 8, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability