FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/146503

PRELIMINARY RECITALS

Pursuant to a petition filed January 09, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Adams County Health and Human Services in regard to FoodShare benefits (FS), a hearing was originally scheduled for January 29, 2013. Following several rescheduling requests, a hearing was held on April 05, 2013, at Friendship, Wisconsin.

The issue for determination is whether the respondent correctly established an overpayment of FS benefits to petitioner.

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: Dana Henriksen
Adams County Health and Human Services
108 E North Street
Friendship, WI 53934-9443

ADMINISTRATIVE LAW JUDGE:
Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Adams County.

2. The county agency seeks to recover $13,447.00 in FoodShare benefits provided to the petitioner from February, 2010, through July, 2012, because it asserts that petitioner failed to disclose her household's self-employment income as a dog breeder, as well as rental income.

3. Respondent sent a notice of FoodShare overpayment to petitioner on December 18, 2012, identifying an overpayment of $13,447.00.

4. Petitioner timely filed an appeal of the overpayment determination on January 9, 2013.

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. The amount of a FoodShare allotment depends upon net income and the number of persons in the household. The county agency contends that the petitioner's household received $13,447.00 more FoodShare than it was entitled to from February, 2010, through July, 2012, because petitioner did not disclose her self-employment income and rental income.

The respondent initially calculated an overpayment of $36,218.00 in FoodShare benefits provided to the petitioner from August, 2006, through July, 2012. Petitioner appealed that finding, and the matter was remanded to the respondent to limit the overpayment calculations to the time period of February, 2010, through July, 2012. The previous decision concluded:

1. The petitioner's 2011 federal tax return does not accurately state her income for the alleged overpayment period of August, 2006, through July, 2012.
2. There is insufficient evidence to determine what if any overpayment the petitioner had from August, 2006, through July, 2012

FOP/143629, December 14, 2012.

Accordingly, the respondent recalculated the overpayment and issued a new notice to the petitioner. I have reviewed the calculations, and conclude that the agency has complied with the prior decision. The petitioner argued that she has always complied with the FoodShare regulations, and never intended to receive more aid than that for which she was eligible. I do not find any evidence in the record of intent of petitioner to hide income from the respondent, nor am I aware that the respondent has ever alleged such a claim. The petitioner is concerned that she does not know her income until her taxes are prepared at the end of the year. FoodShare benefits are based upon income because of the simple premise that the less money a person has, the less she can devote to food. When determining future benefits, the agency must always make an educated guess about a recipient's income based upon her past and current circumstances. I conclude that the respondent has established a proper basis for its determination of an overpayment; conversely, the petitioner has failed to demonstrate that that she did not receive excess FoodShare benefits or that the overpayment was incorrectly calculated.

Petitioner also stated that rental income is not actually received by her household, because it is intercepted by the IRS. The respondent countered that whether or not the IRS intercepted that income, it is still considered income for FS budgeting purposes. Whether the petitioner failed to report the rental income, or the agency failed to budget the rental income that petitioner reported is really a moot issue. Even if the error at issue here was agency error, federal FS regulations provide that an 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).

Based upon the record before me, I conclude that the respondent has established by a preponderance of the evidence that it has correctly established an overpayment of FS benefits to the petitioner in the amount of $13,447.00.

CONCLUSIONS OF LAW

Petitioner received an overpayment in the amount of $13,447.00 during the period of February, 2010, through July, 2012.

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 8th day of May, 2013

\sPeter McCombs
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 May 8, 2013.

Adams County Health and Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability