



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/147286

PRELIMINARY RECITALS

Pursuant to a petition filed February 11, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Calumet County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on June 27, 2013, at Chilton, Wisconsin. Hearings set for April 2, April 24, and May 23, 2013 were rescheduled at the petitioner’s request.

The issue for determination is whether the agency utilized correct income in determining an overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lynn Brenner
Calumet County Dept. of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Calumet County.
2. Petitioner received FS in 2012 for a two-person household. The county budgeted \$986 in earned income from June through August, \$1,013 in September, and \$618 from October through December. No unearned income was budgeted.
3. The county received a wage match showing income to be substantially higher than budgeted. It obtained verification of income from petitioner’s employers, and actual earned income varied

from \$1,353 to \$2,296 from June through December. In addition petitioner received \$319 in child support each month.

4. By a notice dated January 8, 2013, the county informed petitioner that she was overpaid \$2,029 in FS from June through December, 2012, claim no. 0900370710.

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 she did not actually earn the high income figures. She works as a bartender and tip money was divided between the staff, but then all of it was reported by the employer as her income. I acknowledge that it is possible that her story is accurate, but I cannot reverse the overpayment on such a claim alone without any proof. The employer reported the income figures to both the state and presumably the Internal Revenue Service, and thus by record those are petitioner's income figures. If petitioner did not receive that much income her issue is with the employer. Unless the employer changes the income figures, the overpayment claim must be sustained.

CONCLUSIONS OF LAW

Petitioner was overpaid \$2,029 in FS between June and December, 2012 based upon her income being higher than budgeted during the period.

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 1st day of July, 2013

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
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 July 1, 2013.

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