



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/148539

PRELIMINARY RECITALS

Pursuant to a petition filed April 5, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the La Crosse County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on May 29, 2013, by telephone. A hearing set for May 2, 2013 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner failed to report income that affected his FS eligibility.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Tom Miller

La Crosse County Dept. of Human Services
P.O. Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. Petitioner applied for FS on November 29, 2010. He reported no income or expenses, and he began to receive \$200 monthly FS. Petitioner filed six-month reports on May 2 and September 28, 2011, again reporting no income or expenses.
3. The county later received information from a state wage match showing that petitioner earned \$4,695 in the second quarter of 2011, \$4,830 in the third quarter of 2011, and \$3,835 in the fourth quarter, 2011.

4. The county worker averaged out those income amounts. The average for the second quarter, 2011 was \$1,553 per month, and that average income should have triggered petitioner to report the increase in income.
5. The county determined that had petitioner reported those 2011 income amounts, he would have been eligible for just \$16 per month FS for the period May, 2011 through January, 2012.
6. By a notice dated March 29, 2013, the county informed petitioner that he was overpaid \$1,650 in FS from May 1, 2011 through January 31, 2012, claim no. [REDACTED].

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's only response to the county's claim was that he never knew when he would work and that when he did he had to pay rent and child support. However, the amounts of income were significant; he must have had regular employment during periods of time, and had he reported the income AND expenses he might have remained eligible for at least some of the FS he received. However, an expense cannot be budgeted unless it is reported. 7 C.F.R. §273.12(c)(1); FS Handbook, App. 6.1.3.3. As a result, the county worker had to determine an overpayment using income received and *reported* expenses, and thus I conclude that the overpayment was determined correctly.

CONCLUSIONS OF LAW

The county correctly determined an FS overpayment because petitioner failed to report the receipt of income in 2011.

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 31st day of May, 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 May 31, 2013.

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