FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/149762

PRELIMINARY RECITALS

Pursuant to a petition filed June 04, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 14, 2013, at Madison, Wisconsin.

The issue for determination is whether the Department erred in determining an overpayment against petitioner in the amount of $10,732.00 in claims [redacted] ($5,940), [redacted] ($1,239), and [redacted] ($3,553).

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: Luisa McKy
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Dane County.
2. Petitioner was a recipient of FoodShare as of January 2009. The agency budgeted an income for petitioner's household of just over $1,670 per month. At that time, she was informed that she was required to inform the agency if her income ever exceeded 130% of the federal poverty level, which was then $2,428.34.

3. In January 2009, petitioner had total deposits in her Value Checking account in the amount of $9,616.01. She made web payments for retail finance and credit card companies exceeding $4,500. The balances in her accounts were: Value Checking: $4,237.55; Investor's Advantage: $2458.89.

4. In February 2009, petitioner deposited $2,833 in her Value Checking.

5. In March of 2009, petitioner deposited $11,652.95 in her Value Checking.

6. In the statement cycle of July 2011, petitioner made deposits in her Value Checking account totaling $24,654.41. This month included web pay transactions including more than $3,000 to credit cards, and nearly $3,000 to mortgage loans, and $435 to [redacted]. During this month, her ending balance in her Value Checking account was $4,820.09 and the ending balance in her Investor's Advantage account was $34,851.23.

7. In the statement cycle of August 2011, petitioner made deposits in her Value Checking account totaling $12,865.60. This month included web pay transactions including more than $3,000 to credit cards, and nearly $3,000 to mortgage loans, and $432 to [redacted]. During this month, her ending balance in her Value Checking account was $4,338.05 and the ending balance in her Investor's Advantage account was $36,411.03.

8. In the statement cycle of September 2011, petitioner made deposits in her Value Checking account totaling $18,259.00. She deposited $19,566.31 in her Investor's Advantage account with and ending balance of $42,082.31.

9. From March 1, 2009 until June 30, 2009, petitioner collected $1,239 in FS benefits.

10. From September 1, 2010, until August 31, 2011, petitioner collected $3,553 in FS benefits.

11. From September 1, 2011 until June 30, 2012, petitioner collected $5,940 in FS benefits.

12. On May 3, 2013, the Department sent FS overissuance notices to petitioner in the total amount of $10,732.00 in claims [redacted] ($5,940), [redacted] ($1,239), and [redacted] ($3,553) (see ex.#4-D).

DISCUSSION

Based on this record, I conclude that petitioner, over the course of years, received FS while also taking in vast sums of money from some as yet undetermined enterprise.

I have included in the findings of fact above only some examples of the financial transactions – both deposits and expenditures – undertaken by petitioner during the time she was also receiving FS benefits. The record is replete with significant documentation covering the entire relevant timeframe. To list all the movement of funds by petitioner would be merely repetitive. The record clearly establishes that in most, if not all, months where FS was allotted, petitioner also deposited sums of money that exceeded (in some cases more than tenfold), the amount she was required to report.

Petitioner was not credible. She explained that the sums of money that were deposited in any given month were sums paid to her by friends for whom she had extended kindness such as allowing them to make purchases with her credit card. One friend, for example, was unable to purchase her Wisconsin Dells vacations so petitioner put these on a credit card and the friend paid petitioner in cash. In another instance a friend offered petitioner a cruise vacation but petitioner paid for everything with her credit card and was reimbursed in cash. The absolutely inconceivable thing is that this seems to be the case nearly every month over the course of years for petitioner.

After being given the opportunity after hearing to submit documentation to support these claims. Petitioner sent in one letter (ex. #6) purporting to be from [redacted]. The letter is unsigned. The fax cover sheet states it was sent by *petitioner* and uses *petitioner's* e-mail address as the sender e-mail. It is dated 10/3/13 but was sent on 10/18/13, and states that [redacted] borrowed $5,000 from petitioner in June 2009 which was paid back in installments by January 2011. The second letter (ex. #5) purports to be from [redacted]. It is similarly unsigned. Though it is dated 10/15/13, it was actually faxed to this ALJ less than an hour after ex.

#6. In this second letter, the writer states that he has been in a relationship with petitioner for several years and that she lets him deposit all his money in her account and use her credit card and that she pays all his bills. Oddly, she did not mention this during the hearing. I place no weight in this unsigned letter supposedly written by a person who did not provide testimony at hearing. Notably, both letters bear a striking similarity in appearance. Both use a very small font size that I estimate to be 9-point or smaller. Both appear to use the identical typeface which is similar to Arial. And, both letters unusually bear the header and text of the letter formatted far to the top of the page. This is all so coincidental given that the letters were purportedly written by different people weeks apart.

Petitioner also submitted, following hearing, extensive credit card records (part of ex. #3). What these clearly reflect is a pattern of exorbitant spending including charges by [redacted] (example $190 in December 2011), Toys-R-Us (example: more than $850 in December 2011), and numerous stays in many different months at the [redacted] and the [redacted] waterparks in Wisconsin Dells. There are also significant expenditures at [redacted]. And that was just the [redacted] card statements that petitioner provided. She also provided statements from her [redacted] Universal card. This card included separate purchases including over $700 at the [redacted] in May 2011 and another $650 at the [redacted] a week later. I also note that petitioner's bank statements reflected regular and significant installment payments to [redacted], [redacted], [redacted], and a [redacted] credit card. Petitioner provided no records regarding these expenses.

Petitioner submitted a letter as well which purports to explain some of the expenses. The letter is not sworn to under oath. This was submitted after hearing. Neither I nor the agency representatives were able to ask questions about the claims in this letter. None of the various relatives and friends named in the letter testified under oath subject to questioning at the hearing.

Most simply, the record reflects that petitioner's income exceeded the reportable amount in January, February, and March 2009. She was required to have reported this income. She did not. Had she reported the income, she would have been terminated from the FS program. Thus, any FS she received after that time is an overissuance as it was more than she would have received had she complied with the program rules. But, more than this, the documentary evidence demonstrates an egregious and deliberate effort to abuse this public benefit. The agency's case is well documented. Petitioner offered nothing of any substance other than ludicrous assertions and weightless explanations. The bank statements reflect tens of thousands of dollars in deposits over the overpayment periods and petitioner offers only a letter about a $5,000 loan to a friend and a boyfriend with financial management deficiencies? The narrative letter of explanation submitted following hearing similarly carries no weight as it carries the credibility determination I have made regarding petitioner, and because none of those claims were subject to scrutiny at hearing.

Maybe, by some amazing stretch, all of the claims of petitioner are true. Even if that were the case, petitioner utterly failed to establish any facts to necessary support her claims. The Department's exhibits are damning and required a significant rebuttal. There was no real effort, through meaningful and persuasive documentation or testimony, to support a claim that the massive transfers of money and luxurious expenses for months and months and months did not include unreported income from a private enterprise.

CONCLUSIONS OF LAW

Petitioner failed to report income over the FS limits and, therefore, should have been terminated from the program on March 2009. The Department did not err in determining the FS overissuances.

THEREFORE, it is **ORDERED**

That this appeal is dismissed.

[1] Based on a cursory Internet search, this enterprise provides telephone connections to jail inmates.

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 23rd day of October, 2013

_____

\sJohn P. Tedesco
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 October 23, 2013.

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