



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/149840

PRELIMINARY RECITALS

Pursuant to a petition filed June 04, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services ["MiLES"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on July 11, 2013.

The issue for determination is whether it was correct to establish the following 3 Claims against petitioner for overpayments of FS for the time period May 1, 2011 to May 31, 2013 in the total amount of \$4,670.00:

- (I) Claim Number [REDACTED] for the time period May 1, 2011 to April 30, 2012 in the total amount of \$167.00;
- (II) Claim Number [REDACTED] for the time period May 1, 2012 to November 30, 2012 in the total amount of \$3,108.00; and,
- (III) Claim Number [REDACTED] for the time period January 1, 2013 to May 31, 2013 in the total amount of \$1,395.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Nikitia Howse, Income Maintenance Specialist, Advanced
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The issue for determination is whether it was correct to establish the following 3 Claims against petitioner for overpayments of FS for the time period May 1, 2011 to May 31, 2013 in the total amount of \$4,670.00:
 - (I) Claim Number [REDACTED] for the time period May 1, 2011 to April 30, 2012 in the total amount of \$167.00;
 - (II) Claim Number [REDACTED] for the time period May 1, 2012 to November 30, 2012 in the total amount of \$3,108.00; and,
 - (III) Claim Number [REDACTED] for the time period January 1, 2013 to May 31, 2013 in the total amount of \$1,395.00.
3. The FS overpayments in *Findings of Fact #2*, above, resulted from client error because petitioner failed to report in a timely manner that her husband was part of her FS household and her husband had income.

DISCUSSION

Petitioner argues that the overpayments were not her fault because her husband's employer failed to include her husband's overtime pay and holiday pay when it report her husband's income to MiLES. First, all FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2011); See also, *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.1 & 7.3.2.1.¹ Thus, even if the overpayments were not petitioner's fault she must still repay them. Second, the root cause of the overpayments was petitioner's failure to report in a timely manner that her husband was part of her FS household. Petitioner does not deny this. Finally, it is noted that in calculating FS overpayments the income and expenses reported, or required to be reported, for each month of the adjustment period must be used. Income that was not previously reported and was not required to be reported is not used. FWH 7.3.2.1.; See also, 7 C.F.R. § 273.18(c)(1)(ii) (2011)

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is liable for the FS overpayments detailed in *Findings of Fact #2*, above, and must repay them.

NOW, THEREFORE, it is

¹ A person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault.

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 15th day of July, 2013

\sSean P. Maloney
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 15, 2013.

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