



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/150138

PRELIMINARY RECITALS

Pursuant to a petition filed June 18, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Calumet County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on September 17, 2013, at Chilton, Wisconsin. At the request of petitioner, hearings set for July 10, 2013 and August 7, 2013 were rescheduled. During the hearing, the petitioner gave to ES manager Lynn Brenner more of her employment paystubs. At the request of petitioner, the record was held open until September 24, 2013 for the county agency to re-calculate the petitioner's FS overpayment and issue a new overpayment notice, and then until October 1, 2013 for petitioner to review the new FS overpayment notice and submit any response to DHA and the county agency. The county agency timely submitted a closing argument with documents (including its revised and reduced FS overpayment notice) to DHA and the petitioner. The petitioner failed to submit any response to DHA by October 1, 2013 or even by the date of this decision.

The issue for determination is whether the county agency is correctly seeking a revised and reduced FoodShare (FS) overpayment of \$1,586 during the period of November 1, 2012 to May 30, 2013, due to failure to timely and fully report all household earned income to the county agency.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Lynn Brenner, ES Supervisor
Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Calumet County who resides in a household of seven: petitioner; her husband, [REDACTED]; and their five children.
2. The petitioner received FoodShare (FS) benefits for a household of seven during the period of November 1, 2012 to May 30, 2013.
3. Petitioner's husband received earned income from his employment at [REDACTED], [REDACTED]. See Exhibit 4 and Attachments 4 and 6. Mr. [REDACTED]'s employer provided the following income for petitioner in its May 2, 2013 income verification: a) November, 2012 - \$3,503.16; b) December, 2012 - \$4,145.36; c) January, 2013 - \$5,944.20; d) February, 2013 - \$3,166.40; e) March, 2013 - \$2,088.52; and f) April, 2013 - \$3,421.64. See Exhibit 4.
4. The petitioner received earned income from [REDACTED] [REDACTED] [REDACTED]. See attachments 4 and 5.
5. On or about May 2, 2013, the county agency received a SWICA cross match of wages for the petitioner and her husband indicating that petitioner had under-reported their wages to the county agency. See Exhibit 3.
6. The county agency sent a May 21, 2013 Notice of FS Overissuance notice to the petitioner stating that she received a FoodShare (FS) overpayment in the amount of \$2,188.00 during the period of November 1, 2012 to May 31, 2013, due to failure to timely report to the county agency all earned income in her household. See Exhibit 1.
7. During the September 17, 2013 hearing, the petitioner gave to ES manager Lynn Brenner more of her employment paystubs to more accurately calculate her earned income at [REDACTED] [REDACTED] and the actual income verification of her husband's income at [REDACTED], [REDACTED].
8. The record was held open until September 24, 2013 for the county agency to re-calculate the petitioner's FS overpayment and issue a new overpayment notice.
9. The county agency sent a September 20, 2013 revised FS overpayment notice and worksheets to DHA and petitioner indicating that petitioner's FS overpayment from the period of November 1, 2012 to May 31, 2013 was reduced from \$2,188 to \$1,586, due to re-calculations of earned income of both petitioner and her husband. See Attachments 6, 7, & 8.
10. The petitioner did not submit any response regarding the county agency's September 20, 2013 revised FS overpayment to DHA by October 1, 2013 or even by the date of this decision.

DISCUSSION

All FS applicants and recipients have a duty to accurately and truthfully report income to the county agency. 7 C.F.R. §273.12, "Reporting requirements." Furthermore, a FS recipient has the duty to cooperate in provide accurate and true income information on both his/her FS application and during later reviews. The FS recipient is also required to cooperate with the county agency in verifying all household income in order for the county agency to accurately determine a FS application or recipient's FS eligibility and benefits. 7 C.F.R. §273.2(d), "Household cooperation." As explained in the above Findings of Fact, petitioner failed to accurately and fully and timely report all of the earned income for herself and her husband during the period of November 1, 2012 to May 30, 2013.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). 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(a)(2)(emphasis added).

In this case, the county agency proved by the preponderance of the evidence that the basis for the overpayment was clearly client error. During the September 17, 2013 hearing, petitioner argued that the county agency had not accurately determined her FS overpayment, and gave to the county representative more paystubs from her employment and her husband's employment.

This Administrative Law Judge (ALJ) wanted to provide every opportunity for the petitioner to provide clear, reliable documentation of the household's total income by holding the record open for the county agency to re-calculate the petitioner's FS overpayment and issue a new overpayment notice. The county agency sent a September 20, 2013 revised FS overpayment notice and worksheets indicating that petitioner's overpayment from the period of November 1, 2012 to May 31, 2013 was reduced from \$2,186 to \$1,586, due to re-calculations of earned income of both petitioner and her husband. See Attachments 6, 7, & 8. The petitioner did not submit any response regarding the county agency's September 20, 2013 revised FS overpayment to DHA by October 1, 2013 or even by the date of this decision.

The petitioner did not contest that her FS household had received FS benefits during the period of November 1, 2012 to May 30, 2013. Furthermore, the petitioner was unable to offer any reliable evidence to refute the county agency's re-calculation of her FS overpayment case in the reduced amount of \$1,586.00. Nevertheless, petitioner contended that it was unfair that the county agency was seeking to recover the FS overpayment. However, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: "The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . ." 7 C.F.R. § 273.18(a); see also FoodShare Wisconsin Handbook, Appendices 7.3.1.9 and 7.3.1.1. Accordingly, for the above reasons, I conclude that the county agency county agency is correctly seeking to recovery from the petitioner the reduced FoodShare (FS) overpayment of \$1,586 during the period of November 1, 2012 to May 30, 2013, due to failure to timely and fully report all household earned income to the county agency which should have been included in her FS eligibility and benefit determinations.

CONCLUSIONS OF LAW

The county agency is correctly seeking a revised and reduced FoodShare (FS) overpayment of \$1,586 during the period of November 1, 2012 to May 30, 2013, due to failure to timely and fully report all household earned income to the county agency.

THEREFORE, it is

ORDERED

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 30th day of October, 2013

\sGary M. Wolkstein
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 30, 2013.

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