



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/150444

PRELIMINARY RECITALS

Pursuant to a petition filed July 01, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on August 05, 2013, at Racine, Wisconsin.

NOTE: The record was held open to give the agency an opportunity to submit documentation showing that Petitioner was notified of her reporting requirements. The agency submitted a notice sent to Petitioner on November 16, 2010. It has been marked as Exhibit 4 and entered into the record.

The issue for determination is whether the Racine County Department of Human Services (the agency) can recoup an overpayment that allegedly occurred between March 1, 2011 and April 30, 2011.

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: Dean Landvatter, Fraud Co-ordinator
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Racine County.

2. Petitioner stopped working for ManPower in October 2010. (Testimony of Petitioner; Exhibit 3, pgs. 2 and 12)
3. Petitioner began working for ManPower again in January 2011. (Testimony of Petitioner; Exhibit 2, pg. 12; Exhibit 3, pg. 15)
4. Petitioner provided written notice of her return to work on January 6, 2011. (Exhibit 3, pg. 15; Testimony of Petitioner)
5. On May 16, 2013, the agency sent Petitioner a Notification of FoodShare Overissuance, Claim Number [REDACTED], indicating that she was over-issued FoodShare benefits in the amount of \$860.00 between March 1, 2011 and April 30, 2011 because she failed to report earned income. (Exhibit 2, pgs. 16 and 17)
6. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 1, 2013. (Exhibit 1)
7. Petitioner's assistance group size is three. No one in her household is elderly or blind, and only one person in her household is disabled and receives Medical Assistance – her son. (Testimony of Petitioner)
8. Petitioner's income fluctuated during the time in question:
 - In January 2011, Petitioner earned \$2112.00 (\$256 + \$640 + \$576 + \$640);
 - In February 2011, Petitioner earned \$1584.00 (\$432 + \$640 + \$512);
 - In March 2011, Petitioner earned \$3288 (\$640 + \$640 + \$684 + \$ 684 + \$640) and,
 - In April 2011, Petitioner earned \$2470 (\$694 + \$640 + \$472 + \$664).

(Exhibit 3, pg. 12)
9. Petitioner's husband was self-employed as a painter and suffered a business loss of \$3,869 in 2011. (Exhibit 2, pg. 6)
10. Petitioner paid a mortgage of \$1000 per month that included her property taxes. (Testimony of Petitioner; Exhibit 4)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), emphasis added; see also *FoodShare Wisconsin Handbook (FSH)*, App. § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient overcome the county agency's evidence of correct action.

Type of Error

The agency contends that the overpayment in question was caused by client error and asserts that Petitioner did not timely report her return to work for Manpower. However, Petitioner testified credibly, that she did, in fact, notify the agency on January 6, 2013, that she was returning to work. Petitioner's testimony is corroborated by a copy of the letter she faxed to the agency. (See Exhibit 2)

FSH §6.1.3.1 requires the agency to act on reported changes within ten days and further states that a best practice is to act on the reported change as soon as possible. The agency did not comply with that directive. Thus, if an overpayment occurred, it was the result of agency/non-client error.

Can the Agency Recoup an Overpayment that Allegedly Occurred in March and April 2011?

When an overpayment is caused by non-client error, “the overpayment period ...begins with the month the error is discovered and extends back 12 months or when the error was effective, whichever is most recent.” *FSH §7.3.2.1*

The agency did not provide case comments or other documentation to establish when it became aware of the alleged overpayment. Given that the agency sent Petitioner the Notification of FoodShare Overissuance on May 16, 2013, it is reasonable to conclude that the agency discovered the overpayment sometime around the month of May 2013. Thus, the agency can only reach back 12 months to about June 2012 to recoup any overpayment.

The overpayment that the agency seeks to recoup allegedly occurred in March and April 2011, far outside the 12 month overpayment period allowed by *FSH §7.3.2.1*. Consequently, the agency does not have jurisdiction to recoup the alleged overpayment.

CONCLUSIONS OF LAW

1. If an overpayment occurred, it was due to non-client/agency error.
2. The agency does not have jurisdiction to recoup the alleged overpayment, because it falls outside the 12 month overpayment period allowed by *FSH §7.3.2.1*

THEREFORE, it is

ORDERED

That the agency rescind claim number [REDACTED] within ten days of this decision.

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 Milwaukee,
Wisconsin, this 7th day of August, 2013.

\sMayumi M. Ishii
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 August 7, 2013.

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