FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/150623

PRELIMINARY RECITALS

Pursuant to a petition filed July 10, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Rusk County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on August 27, 2013, at Ladysmith, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of FoodShare.

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: Beulah Garcia
Rusk County Department of Social Services
Courthouse
311 Miner Avenue East, Suite C240
Ladysmith, WI 54848

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [redacted]) is a resident of Rusk County.
2. The agency seeks to recover $5,756 in FoodShare provided to the petitioner's household from June 1, 2012, through May 31, 2013.

3. The petitioner received between $1,536.90 and $2,069.90 in monthly unearned income from June 2012 through May 2013. The county agency assumed she received between $1,587.56 and $2,069.90 during this period. The petitioner also earned an average of $869.12 during this period. The county agency did not consider this income when determining her benefits.
4. The petitioner's oldest child moved out of the house and began attending college in August 2012. The petitioner did not report this at her next review in November 2012.
5. There were six persons in the petitioner's household until her son moved away and went to college and five persons after then.
6. The petitioner's monthly household net income after allowing her the standard deduction, the earned income deduction, and the shelter deduction was as follows:

a.	June 2012:	$2,731.02
b.	July 2012	$2,719.35
c.	August 2012	$2,318.06
d.	September 2012:	$2,345.06
e.	October 2012:	$2,327.39
f.	November 2012:	$2,392.38
g.	December 2012:	$2,392.38
h.	January 2013:	$2,389.72
i.	February 2013:	$2,389.72
j.	March 2013:	$2,389.72
k.	April 2013:	$2,629.80
l.	May 2013:	$2,629.80

7. The petitioner received $440 in FoodShare in June and July 2012; $445 in August 2012; $680 in September 2012; $682 in October 2012; $687 in November 2012; $658 in December 2012 and January 2013; and $659 in February, March, April, and May 2013.
8. The agency prepared a worksheet that included the petitioner's actual and correctly budgeted income and expense along with her household size on June 17, 2013. It manually corrected this worksheet before the hearing to reflect that her benefits were not based upon her reduced household size until December 2012, which is after she was required to report the change on her renewal.

DISCUSSION

Federal regulations require state agencies to "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. The size of a FoodShare allotment depends upon net income and the number of persons in the household. The Department contends that the petitioner's household received $5,756 more in FoodShare than it was entitled to from June 1, 2012, through May 31, 2013, primarily because she did not report earned income averaging $869.12 throughout this period and that her son moved out of the house to attend college in August 2012.

The petitioner did not challenge that she received unreported income or that she did not report that her son had left home to go to college. When I asked her whether the agency's current income figures were

correct, she stated that that was the purpose of the hearing. However, she did not dispute any of these figures, all of which the agency documented thoroughly. As a result, the preponderance of the credible evidence indicates that these figures are correct. As for her son's living situation, she testified that she did not believe it was necessary to report this change because he came home on some weekends and she visited him on others, meaning that she still provided him with a significant amount of food. A FoodShare household consists of a "group of individuals who live together and customarily purchase food and prepare meals together for home consumption." 7 CFR § 273.1(a)(3); *See also FoodShare Wisconsin Handbook* § 3.3.1. This means that if the petitioner's son no longer lived with her, he was not part of her FoodShare household, regardless of how much food she prepared for him. Although he moved out in August 2012, policy found at *FoodShare Wisconsin Handbook,* § 6.1.1.2. indicates that, unless her income rose above 130% of the federal poverty level, she did not have to report the change until she had her annual FoodShare renewal. The agency initially based the overpayment on a five rather than a six-person household beginning in September 2012 but corrected this so that the overpayment was first based upon the reduced household size in December 2012.

The agency prepared a comprehensive worksheet showing the petitioner's earned and unearned income, allowable deductions, net income, household size, actual FoodShare allotment, and the allotment she was entitled to for each month of the period of the alleged overpayment. The net income used to determine the amount of an allotment is determined after subtracting those deductions—and only those deductions—found in 7 CFR § 273.9(d) from gross income. The petitioner was entitled and received a $187 standard deduction when there were five persons in her household. When there were six persons in her household, she was entitled to a $208 standard deduction through September 2012 and a $214 standard deduction after then. *FoodShare Wisconsin Handbook*, § 4.6.2 and 8.1.3; 7 CFR § 273.9(d)(1). She would have been entitled to a deduction equal to 20% of her monthly earned income, but this is not allowed when calculating overpayments in situations where the the income has not been reported. *FoodShare Wisconsin Handbook,* § 7.3.2.1. She was not entitled to a shelter deduction. This deduction equals the amount that housing costs, including a standard utility allowance, currently set at $442, exceeds 50% of her net income remaining after all other deductions are subtracted from gross income. *FoodShare Wisconsin Handbook*. § 4.6.7; 7 C.F.R. § 273.9(d)(6)(ii); *FoodShare Wisconsin Handbook,* § 8.1.3. Her net income after her other deductions was not high enough to qualify her for this deduction. After subtracting the standard deduction, the only one she was entitled to, from her actual gross income, the agency correctly determined that her monthly net income equaled the amounts listed in *Findings of Fact No. 6.*

The *FoodShare Wisconsin Handbook,* § 8.1.2. states the amount of FoodShare a household is entitled to each month, based upon its net income and number of person. For example, after subtracting all of the allowable deductions from the petitioner's $2,816.80 gross income in April and May 2013, her net income was $2,629.80, which, as a five-person household, entitles her to $4 in FoodShare. She actually received $659, meaning she was overpaid $655 in benefits. My review of the agency's worksheet indicates that it accurately reflects this and all of the other amounts she was entitled to and was overpaid. As a result, I must uphold the finding that she received $5,756 more in FoodShare from June 1, 2012, through May 31, 2013, than she was entitled to and that she must repay that amount.

CONCLUSIONS OF LAW

The FoodShare agency correctly determined that the petitioner received $5,756 more in FoodShare from June 1, 2012, through May 31, 2013, than she was entitled to and that she must repay that amount.

THEREFORE, it is **ORDERED**

The petitioner's appeal is 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 29th day of August, 2013

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\sMichael D. O'Brien
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 August 29, 2013.

Rusk County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability