



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/150753

PRELIMINARY RECITALS

Pursuant to a petition filed July 16, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Barron County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on August 27, 2013, at Barron, Wisconsin.

The issue for determination is whether the county agency correctly seeks to recover an overpayment of FoodShare that occurred because of its error.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Bonnie Roemhild
Barron County Department of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Barron County.
2. The county agency seeks to recover \$2,010 in FoodShare provided to the petitioner from June 2012 through May 2013 because it incorrectly determined his net income.

3. The petitioner received \$1,246.57 in unearned income in June 2012, \$1,146.57 from July through December 2012, and \$1,165.57 from January through May 2013.
4. The petitioner lived alone from May 2012 through May 2013.
5. The petitioner had \$170.10 in medical expenses in June 2012, \$169.10 from July through December 2012, and \$174 from January through May 2013.
6. The petitioner pays \$812 in property taxes each year, or \$67.67 per month. When determining his FoodShare allotment, the county agency entered \$812 as the amount he paid in property taxes each month.
7. The petitioner paid \$41 per month in property insurance.
8. The petitioner received \$66 in FoodShare in June 2012, \$198 a month from July through December 2012, and \$192 a month from January through May 2013.

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. Federal rules also require FoodShare agencies to recover claims back at least one year from when the alleged overpayment was discovered. 7 CFR § 273.18(c)(1). When an overpayment occurs because of the agency’s error, Wisconsin policy instructs the agency that 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.” *FoodShare Wisconsin Handbook*, § 7.3.2.1. The amount of a FoodShare allotment depends upon net income and the number of persons in the household. Net income is determined after subtracting those deductions—and only those deductions—found in 7 CFR § 273.9(d) from gross income.

The petitioner, who lives alone, received \$66 in FoodShare in June 2012, \$198 a month from July through December 2012, and \$192 a month from January through May 2013. When determining his allotment, the county agency used \$812 as the amount he pays in property taxes each month instead of each year. If the correct amount, \$67.67 per month, had been used, the agency contends that he would have received benefits of \$6 in June 2012, \$16 per month from July 2012 through April 2013, and \$38 in May 2013, giving him a total overpayment of \$2,010 in this period. It included worksheets showing how it reached these figures, and I find no error in its calculations.

I will provide a step-by-step calculation of April 2013 so that the petitioner can see how the overpayment was determined. His total gross income that month was \$1,165.57, all of it unearned. He was entitled to the \$149 standard deduction allowed for households with up to three members. *FoodShare Wisconsin Handbook*, § 4.6.2 and 8.1.3; 7 CFR § 273.9(d)(1). He was also entitled to the medical deduction available for those whose verified medical expenses exceed \$35 per month. 7 CFR § 273.9(d)(3); *FoodShare Wisconsin Handbook*, § 4.6.4.1. The petitioner’s deduction was \$139.10 because his unreimbursed medical expenses were \$174.10. He is not entitled to the deduction equal to 20% of earned income because he was not working. *See* 7 CFR § 273.9(d)(2).

Finally, he is entitled to the shelter deduction, which equals the amount that his housing costs, including a standard utility allowance currently set at \$442, exceed 50% of the 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. He had received an \$851.27 shelter deduction, primarily because of the large amount incorrectly attributed to his property taxes. His actual monthly shelter costs consist of \$67.67 in property taxes, \$41 in homeowner’s insurance, and the \$442 standard utility deduction, or \$550.67. Because there is a standard utility allowance, his actual utility costs are not

considered. Deducting the \$149 standard allowance and the \$139.10 excess medical deduction from his \$1,165.57 gross income, leaves him with \$877.47. Half of this is \$438.74. His \$550.67 in shelter costs exceed this amount by \$111.93, which is his correct shelter deduction. Subtracting the three deductions he is allowed, the \$111.93 shelter deduction, the \$149 standard deduction, and the \$139.10 medical deduction from his \$1,165.57 gross income leaves \$765.54 in countable net income. The FoodShare allotment for a one-person household, the size of the petitioner's, with this income is \$16. *FoodShare Wisconsin Handbook*, § 8.1.2. This is \$176 more than the \$192 he actually received. FoodShare law requires that he repay this amount and the other excessive benefits he received in the previous year, even though the overpayment occurred entirely because of the agency's error.

CONCLUSIONS OF LAW

The county agency correctly determined that the petitioner must repay a \$2,010 overpayment of FoodShare that occurred from June 2012 through May 2013 because of its error.

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 9th day of September, 2013

\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 September 9, 2013.

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