



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/151208

PRELIMINARY RECITALS

Pursuant to a petition filed August 06, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Manitowoc County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 03, 2013, at Manitowoc, Wisconsin.

The issue for determination is whether the respondent has established an overpayment of FS benefits to petitioner during the period of February, 2013, through April, 2013, in the amount of \$600.00.

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: Sheryl McNamara
Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County who received the maximum FS allotment for a 1-person household during the period of February, 2013, through April, 2013.

2. In April, 2013, respondent conducted a FS interview with petitioner and learned that petitioner had commenced employment with [REDACTED] on or about December 3, 2012. Exhibit 2.
3. In January of 2013, Petitioner had called the Job Service Economic Support building regarding energy assistance, and advised that he had obtained a job at [REDACTED].
4. The respondent received a State wage match for petitioner's earned income, which indicated 1st quarter (2013) wages of \$5,927.00 paid to petitioner by [REDACTED].
5. The petitioner received FS benefits during the period of February, 2013, through April, 2013. Exhibit 2.
6. The respondent sent petitioner a Notice of FoodShare Overissuance stating that petitioner was overpaid FS in the total amount of \$600.00 for the period of February, 2013, through April, 2013, due to unintentional household/client error in failing to report accurate household income. Exhibit 2.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS 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), see also FoodShare Wisconsin Handbook, § 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

As decided in prior cases before the Division of Hearings and Appeals, "discovery" was not the date of referral of a likely overpayment for investigation; discovery is the date when the agency actually determines an overpayment of a fixed amount occurred, and sends a notice to the FS recipient. Overpayments due to client error may be recovered for up to 6 years prior to discovery. However, a recent April 4, 2012 BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012), indicates that the "discovery" date is not the county agency's FS Overpayment Notice, but instead the "the date that the ESS became **aware** of the potential that an overissuance may exist." In this case, that date appears to be sometime during April, 2013 resulting in the same April, 2013 "awareness" or "discovery" date.

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 to overcome the county agency's evidence of correct action.

At hearing, the respondent presented a straight-forward case: Respondent learned of petitioner's employment in April, 2013, referred the matter to O'Brien and Associates to calculate the overpayment, and advised petitioner of the overpayment due to an alleged unintentional failure to report earned income.

During the hearing, petitioner did not establish any error in the calculation of the FS overpayment. Instead, petitioner argued that he had, in fact, reported his new job to the respondent. He testified credibly that he notified Manitowoc County of his new job in January of 2013, and thought that he was fully complying with all FS program requirements. Respondent countered that he had never contacted FS regarding the new employment; it appears that petitioner had contacted Manitowoc County about energy assistance when reporting the new job. The energy assistance folks apparently did not share this information with the FS folks.

Petitioner contends that seeking recovery of the FS overpayment is unfair because the FS overpayment was not petitioner's fault, as it was caused by agency error. However, even if I were to accept this contention as accurate, I note that the February, 2013, through April, 2013, FS overpayment was created during the 12-month period prior to the respondent's discovery, and 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, 7.3.2.1. Accordingly, for the above reasons, the respondent is correctly seeking recovery of a FoodShare overpayment to the petitioner during the period of February, 2013, through April, 2013, due to unbudgeted earned income of petitioner which, when correctly budgeted, resulted in a determination of no eligibility for FS benefits for petitioner's household for that period.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a FoodShare overpayment to the petitioner during the period of February, 2013, through April, 2013, due to unbudgeted earned income of petitioner which, when correctly budgeted, resulted in a determination of no eligibility for FS benefits for petitioner's household for that period.

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 2nd day of October, 2013.

\sPeter McCombs
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 2, 2013.

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