



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/151379

PRELIMINARY RECITALS

Pursuant to a petition filed August 19, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on October 9, 2013, by telephone. The hearing was a rehearing granted by the Division of Hearings and Appeals on September 23, 2013.

The issue for determination is whether the county may recover an FS overpayment.

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Anitria Hickman
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner received maximum FS of \$200 per month from February through May, 2013. Prior to February, 2013 she reported to the agency that she received unemployment compensation (UC), but the agency failed to budget the UC in determining petitioner's FS amount.
3. In May, 2013, petitioner contacted the agency to ask why the notice she received said that she had no income. The worker discovered the error after that call.

4. Petitioner would not have been eligible for FS if the UC had been budgeted correctly.
5. By a notice dated August 7, 2013, the agency informed petitioner that she was overpaid \$800 in FS from February through May, 2013 due to agency error, claim no. [REDACTED].

**DISCUSSION**

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). 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(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

It is evident that the income was over the limit, and petitioner does not dispute that. It is undisputed that the FS were issued due to agency error. Petitioner argued simply that the error was the agency's and she cannot afford to repay the overpayment.

The problem is that the federal law requires the agency to recover ALL FS overpayments, even those resulting from agency error. Therefore I must conclude that the agency correctly sought recovery of the \$800 overpayment. Furthermore there is nothing in the rules allowing me to reduce the amount because of petitioner's current financial circumstances.

**CONCLUSIONS OF LAW**

The agency correctly seeks recovery of an overpayment caused by agency error.

**THEREFORE, it is ORDERED**

That 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 14th day of October, 2013

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\sBrian C. Schneider  
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 14, 2013.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability