FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/152173

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 06, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner was overpaid FS due to her failure to report accurate household members and due to income in excess of program limits.

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: Julie Salmeron
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Between at least October, 2011, and April, 2013, petitioner received FS for herself and her three children.

3. Petitioner and EF, the father of one of petitioner's children, executed a lease for a residence located at [redacted] on July 15, 2011. Exhibit 2.

4. On June 18, 2012, EF and petitioner executed a Lease Addendum removing EF from the [redacted] lease agreement. Exhibit 2.

5. Petitioner has been employed at [redacted] since October 13, 2008. Petitioner's employer completed an Employment Verification Request for the respondent, dated May 23, 2013, and indicated, in part, that petitioner's pay is hourly, and may include tips/commission based on performance and compliance. Petitioner's paystubs identify the payment of bonus earnings. Exhibit 2.

6. On or about August 29, 2013, the respondent notified petitioner that it had established an FS overpayment (Claim no. [redacted]) in the amount of $4,653.00, covering the period of October, 2011, through June, 2012.

7. On or about August 29, 2013, the respondent notified petitioner that it had established an FS overpayment (Claim no. [redacted]) in the amount of $2,615.00, covering the period of July, 2012, through April, 2013.

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 respondent shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by the respondent's 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, § 7.3.1.2.

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

I. Reporting Accurate Household Members; Overpayment Claim no. [redacted].

The respondent's determination of overpayment during the period of October, 2011, through June, 2012, was premised, in part, upon the household composition. Parents living in a household with their child or children are part of the same FS household. 7 C.F.R. § 273.1(b). In this case, the respondent determined that EF, the father of one of the petitioner's minor children, had been living with the petitioner and their child during the period of October, 2011, through June, 2012. The respondent then reviewed EF's employer verification of wages and EF's the State Wage Record, averaged during each relevant work quarter, and added this earned income to the household's FS budget for all relevant months in which petitioner received FS. The respondent thereby determined that petitioner's household, including EF, was overissued a total of $4,653.00 in FS.

In reaching its conclusion as to EF's residence, the respondent relied upon: (1) A rental lease that EF and the petitioner signed for the [redacted] residence on July 15, 2011; (2) A rental addendum removing EF from the lease signed June 18, 2012; (3) Transunion Consumer Credit Report dated July 18, 2013, identifying EF's residence at [redacted], Milwaukee, Wisconsin as of September, 2011; and (4) A Voter Profile printed from the website myvote.wi.gov, identifying EF's residence at [redacted]

[redacted], [redacted] See, Exhibit 2. Additionally, respondent's representative testified that Child Support records also identified EF's address at [redacted].

The petitioner rebutted the respondent's case with: (1) her own testimony to the effect that she and EF had signed the lease together, but that they had a rocky relationship and EF did not live with her the entire time (of this overpayment period); (2) testimony from EF indicating that he may have used the address for mailing purposes, but he never lived there. EF maintained that he has always lived at the home of his mother. EF's mother was not present at hearing to corroborate this testimony. I found the testimony offered by petitioner and by EF to be inconsistent, and less than credible as it pertains to EF's residence.

Petitioner had received FS benefits for a household reportedly comprised of four individuals: herself and her three children. The addition of EF to the household produced a change in the variables that determine the household's benefit level. The size of the household increased from four to five, and the applicable income limits and benefit levels increased accordingly. As EF had income, it must have been considered in determining whether the expanded household was eligible for FS benefits and, if so, the level of benefits for which it is eligible. The respondent established that the household income, when including EF's income, exceeded program limits for the period of October, 2011 through June, 2012.

Based upon the record before me, I find that the respondent has satisfied its initial burden of establishing the basis for its determination that petitioner failed to properly disclose that she and EF were residing together. The petitioner has failed to successfully rebut the respondent's evidence. As such, I conclude that the respondent has properly established an overpayment of FS during the period of October, 2011 through June, 2012.

II. Reporting Changes to Household Income; Overpayment Claim no. [redacted].

Under current rules an FS household needs to report increased income only if the new income causes total household income to rise above 130% of the federal poverty level. FS Handbook, § 6.1.1.2. Petitioner's income includes bonus earnings, though the bonuses are not guaranteed and may not be regularly paid.

Notices dated September 12, 2011, and September 24, 2012, explicitly informed petitioner of her duty to report when her income exceeded certain dollar amounts. See, Exhibit 2. Respondent notes that petitioner's income exceeded the 130% threshold during at least the period of July, 2012 through April, 2013. In support of this contention, the respondent has provided un-refuted wage information from petitioner's employer, as well as quarterly wage information reported to the State of Wisconsin.

The petitioner responded that she always reported correct wage information. She stated that she had never been previously notified of any discrepancy between her actual and reported wages. The federal regulation concerning FS overpayments requires the respondent 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), emphasis added; see also FS Handbook, § 7.3.2.1. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the respondent. See, 7 C.F.R. § 273.18(b); see also, FS Handbook, § 7.3.2.1. An Overpayment Referral was issued on March 6, 2013; if the error was caused by respondent error, the "start date" for the overpayment would have been March 6, 2012.

As such, while I do not doubt the petitioner's sincerity in testifying that she believed that she was correctly reporting her wages, that assertion does not relieve her of her obligations to accurately report her income, including her bonuses. The respondent had properly notified petitioner of the need to report increases in income over the past few years; as a recipient of public benefits petitioner has an obligation to comply with

all FS program rules and regulations. Petitioner ultimately argues that the respondent erred in not identifying this reporting discrepancy. However, the issue of fault is moot, as the overpayment period at issue in Claim no. [redacted] occurred within 12 months prior to the respondent's discovery of the overpayment. As noted previously, an overpayment exists when a recipient receives more benefits that she should have. While petitioner may have unintentionally failed to report her bonus earnings, the failure to budget those earnings, regardless of fault, created an overpayment.

CONCLUSIONS OF LAW

1. The respondent established Overpayment Claim no. [redacted] based upon petitioner's failure to report that EF, the father of one of petitioner's children, was residing with her at least during the period of October, 2011, through June, 2012.

2. The respondent established Overpayment Claim no. [redacted] based upon petitioner's unintentional failure to report increases in her household income.

THEREFORE, it is **ORDERED**

That the petition for review 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 13th day of November, 2013

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University [redacted]
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 November 13, 2013.

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