



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/152235

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on October 23, 2013, at [REDACTED] Wisconsin. At the request of petitioner, a translator (Megan Valle) was provided at the hearing who translated for the petitioner and his wife. At the request of the parties, the record was held open for written closing argument and any additional exhibits to be submitted by the county agency by November 13, 2013, with a response plus exhibits by the petitioner by December 4, 2013. The county agency timely submitted a detailed closing argument with Exhibits 4A to 11 to DHA and the petitioner. However, petitioner failed to submit any response whatsoever to DHA.

The issue for determination is whether the county agency is correctly seeking recovery of FoodShare (FS) overpayments to the petitioner in the amount of \$3,952 for the period of February 1, 2009 to September 30, 2009, due to petitioner's failure to timely report that he and his wife owned a business, [REDACTED], LLC and the income from that business resulting in significantly reduced FS eligibility during that period.

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, Room 651
Madison, Wisconsin 53703

By: Amanda Huilar, ESS
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
[REDACTED] WI 54301

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County who resided with his wife, [REDACTED], and their three children during 2009.
2. On or about April 1, 2004, the petitioner and his wife bought a business, [REDACTED], which was a restaurant and grocery store. [REDACTED] was located at [REDACTED] in [REDACTED] WI. See Exhibit F. Petitioner sold this business during April, 2012 on land contract to the [REDACTED] for which they received a down payment and monthly payments.
3. The petitioner applied for FoodShare (FS) and Medicaid (MA) on or about September 11, 2008 for a FS household of five.
4. The county agency sent a September 12, 2008 notice to the petitioner which approved that FS application but for a FS group of four (without including their daughter, NM, who was an ineligible student).
5. At time of application, petitioner only reported income of \$1,721 from his earned income from [REDACTED]. See Exhibits 5, 6 & 8.
6. As of January, 2009, [REDACTED] business began to make a profit for petitioner and his wife, but petitioner failed to report that self-employment business income to the county agency in his January 13, 2009 six month report form (SEIRF). See Exhibits 3, 5 & 6.
7. If petitioner had reported the [REDACTED] business income, then that increased income would have reduced the petitioner's FS benefits as of February, 2009.
8. After receiving a July 10, 2012 "tip" the county agency began investigating the petitioner's failure to disclose the ownership of the business, [REDACTED] and the income from that business.
9. The petitioner's earned income from [REDACTED] was confirmed in State Wage Records. See Exhibit 8.
10. The self-employment income for petitioner and his wife from [REDACTED] are indicated on Exhibit 9.
11. The county agency sent a September 3, 2013 FS Overpayment Notice to the petitioner which stated that petitioner received an overpayment of \$3,952 during the period of February 1, 2009 to September 30, 2009, due to petitioner's failure to timely report that they owned a business, [REDACTED] LLC and the income from that business. See Exhibit 1.
12. Exhibit 4 indicates how the \$3,952 FS overpayment was correctly calculated.
13. The petitioner's FS benefits ended during March, 2010.

DISCUSSION

All FS applicants and recipients have a duty to accurately and truthfully report income to the county agency. 7 C.F.R. §273.12, "Reporting requirements." Furthermore, a FS recipient has the duty to cooperate in provide accurate and true income information on both his/her FS application and during later reviews. The FS recipient is also required to cooperate with the county agency in verifying all household income in order for the county agency to accurately determine a FS application or recipient's FS eligibility and benefits. 7 C.F.R. §273.2(d), "Household cooperation." As explained in the above Findings of Fact, petitioner failed to accurately and timely report his self-employment income for his business, [REDACTED] during the period of January, 2009 through September, 2009.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). 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(a)(2)(emphasis added).

During the October 23, 2013 hearing, the county agency representatives, ESS Amanda Huilar and fraud investigator Diane Van Asten, presented a well-organized case, and established that the petitioner failed to timely disclose his business or timely report self-employment income from that business owned by him and his wife. As a result, petitioner's self-employment income was not budgeted as income to the FS household in determining the petitioner's FS household eligibility and benefits during the period of February, 2009 through September, 2009. The county agency established that petitioner's net household income was substantially above the income budgeted by the county (due to petitioner's failure to report income) resulting in the reduction in petitioner's accurate FS benefits during the entire FS overpayment period. The petitioner did not contest that he had received FS benefits during the period of February 1, 2009 to September 30, 2009. Furthermore, petitioner did not offer any evidence to refute the accuracy of the county's FS overpayment determination of \$3,952.00 for that overpayment period.

This Administrative Law Judge (ALJ) wanted to provide every opportunity for the petitioner to provide clear, reliable documentation regarding the report of his self-employment business and income from that business. Thus, the record was held open for written closing arguments and any additional exhibits to be submitted by the county agency with a response plus exhibits by the petitioner. The county agency timely submitted a detailed closing argument (with Exhibits 4A to 11) to DHA and the petitioner. However, petitioner failed to submit any response or evidence to DHA by December 4, 2013 or even by the date of this decision. See above Preliminary Recitals.

During the hearing, petitioner alleged that he and his wife were not fully aware that they were receiving FS during the overpayment period. However, such allegation is not credible as petitioner participated in submitting SMRFs to the county, participated in annual reviews, and were regularly in contact with the county agency from the time of their September, 2008 application until their FS benefits ended during March, 2010. See Exhibit 7A. The petitioner also alleged that he was not aware that he needed to report his business because it was not "profitable." However, the county agency persuasively responded with testimony and exhibits to establish that [REDACTED] was profitable as of January, 2009, and thus petitioner was required to timely report such self-employment income to the county agency. Petitioner failed to do so. Moreover, the county agency submitted a detailed, convincing November 11, 2013 closing argument (with Exhibits 4A through Exhibit 11) which clearly documented that the county agency correctly and accurately established the FS overpayment against the petitioner. The petitioner failed to submit any closing argument to DHA to respond to the county's argument or additional exhibits.

The petitioner generally contended that it was unfair that the county agency was seeking recovery of the overpayment. During the hearing, petitioner's wife alleged in vague terms, with no documentation, that she did once verbally report the business to an ESS worker and said there was no income from that business. However, petitioner was unable to provide any reliable evidence of such reporting, especially given the multiple opportunities in SMRFs and review in which petitioner or his wife could have reported the full and accurate self-employment income from [REDACTED] but failed to do so. See above Findings of Fact. 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, Appendices 7.3.1.9 and 7.3.1.1. Accordingly, the county agency is correctly seeking recovery of FoodShare (FS) overpayments to the petitioner in the amount of \$3,952 during the period of February 1, 2009 to September 30, 2009, due to petitioner's failure to timely report that he and his wife owned a business, [REDACTED], LLC and the income from that business resulting in significantly reduced FS benefits during that period.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of FoodShare (FS) overpayments to the petitioner in the amount of \$3,952 during the period of February 1, 2009 to September 30, 2009, due to petitioner's failure to timely report that he and his wife owned a business, ██████████, LLC and the income from that business.

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, Room 651, 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 30th day of December, 2013

\sGary M. Wolkstein
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 December 30, 2013.

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