



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/152474

PRELIMINARY RECITALS

Pursuant to a petition filed September 27, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Northern IM Consortium to recover FoodShare benefits (FS), a hearing was held on October 30, 2013, by telephone.

The issue for determination is whether petitioner was overpaid FS due to incorrect income budgeting.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Beulah Garcia
Northern IM Consortium
10610 Main St., Suite 224
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. Petitioner applied for FS on January 15, 2012. She reported that although her husband still was employed she was off work due to an illness. By a notice dated March 1, 2012, the agency informed petitioner that FS were granted effective February 14, 2012. She would receive \$35 for February and \$64 each month thereafter.
3. Petitioner returned to work in late February, 2012. She did not report her return to work to the FS agency.

4. FS closed effective August 1, 2012 because petitioner did not complete a review.
5. The agency later discovered that petitioner had returned to work in February, 2012. It obtained actual income figures for her husband, but petitioner's employer did not respond. The agency thus took petitioner's quarterly income reported to the State and divided by three to average a monthly income.
6. By a notice dated September 23, 2013, the agency informed petitioner that she was overpaid \$355 in FS (all FS issued to her) from February 14 through July 31, 2012, claim no. [REDACTED], because income was over the limit during those months.

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).

There is no question that petitioner's household income was over the limit during the months in question. For example, in April, 2012, net income after deductions using actual income was \$3,610, and the FS net income limit was \$1,545. The only month that might be questionable is February, 2012. Petitioner testified that she received no paychecks in that month, but the county budgeted income to her for that month because it divided quarterly income by three. However, petitioner's husband's income also was higher by over \$100 that month, and since the original calculation had them just \$8 under the net income limit, it is likely that the household would be over the limit even if petitioner had no income.

Petitioner's main complaint was that the March 1 notice informed her that she had to report an increase in income if household income rose above \$2,008, and the notice itself showed income to be *higher* than that. The notice clearly was faulty as far as reporting requirements, but FS rules require FS overpayments to be recovered even in cases of agency error. Thus petitioner was overpaid because her actual household income was higher than the FS limits during the months in question.

CONCLUSIONS OF LAW

Petitioner was overpaid FS from February through July, 2012 because she failed to report that she returned to work after FS eligibility began.

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 5th day of November, 2013

\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 November 5, 2013.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability