



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/152698

PRELIMINARY RECITALS

Pursuant to a petition filed October 10, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Wood County Human Services - WI Rapids in regard to FoodShare benefits (FS), a hearing was held on November 20, 2013, at Ladysmith, Wisconsin.

The issue for determination is whether the county agency correctly determined the amount of the petitioner's FoodShare overpayment.

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: Beulah Garcia

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Rusk County.

2. The FoodShare agency notified the petitioner on August 8, 2013, that her household received \$5,298 more in FoodShare than it was entitled to from January 16, 2012, through December 31, 2012, because not all of the household's income was considered when determining benefits.
3. The agency later reduced the amount that was allegedly overpaid to \$2,032, finding that the overpayment occurred only from September through December 2012.
4. The petitioner's household received \$505 in FoodShare in September 2012 and \$509 each month from October through December 2012.
5. There are five persons in the petitioner's household.
6. The worksheet used to determine the overpayment indicates that the petitioner's household had no income from September through December 2012. It did not provide any other documentation of her household's income.

DISCUSSION

Federal rules require state agencies to "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. The FoodShare agency initially claimed that the petitioner's household received \$5,298 more in FoodShare than it was entitled to from January through December 2012 because some of her husband's income was not counted. At the hearing, the agency reduced the alleged overpayment to \$2,032 after finding that the overpayment occurred only from September through December 2012. The petitioner contends that she reported what the agency requested of her, and the case comments, although not conclusive, support for her account. Nevertheless, because the agency must recover all FoodShare overpayments, I cannot consider this evidence.

Although the agency must recover all overpayments, including those caused by its own errors, it still has the burden of proving by the preponderance of the credible evidence that an overpayment occurred. This proof usually requires at least some documentation, because without documentation the recipient cannot challenge and the Division of Hearings and Appeals cannot verify the amount of the overpayment. In this matter, the agency submitted a worksheet showing that the petitioner received \$505 in FoodShare in September 2012 and \$509 each month from October through December 2012. The agency contends that she was not entitled to any of this because her net income exceeded the program's limit in each of these months. However, its worksheet indicates that in each of these months her household income was incorrectly budgeted at \$2,000 and that her actual income was \$0. This is obviously an error because she and her husband were working and earning money. But I cannot verify the agency's overpayment calculation because it failed to document the correct income and deduction figures anywhere. Therefore, I must find that it has not met its burden of proof and cannot recover the alleged overpayment.

CONCLUSIONS OF LAW

There is insufficient evidence to determine whether the agency correctly determined the amount of the petitioner's overpayment.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it remove from the petitioner's record any finding that she was overpaid FoodShare from January through December 2012.

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 2nd day of December, 2013

\sMichael D. O'Brien
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 2, 2013.

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