



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/152942

PRELIMINARY RECITALS

Pursuant to a petition filed October 21, 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 13, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency is correctly seeking recovery of FS overpayments to the petitioner during the period of February, 2010 through June, 2010, due to failure to timely report to the county agency her employment and earned income.

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: Jose Silvestre

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received FoodShare (FS) benefits for a household of one during the period of May 1, 2013 through July 31, 2013. Exhibit 7.

2. The county agency received an alert that petitioner had been working at [REDACTED], but petitioner had failed to timely notify the county agency of his employment and earned income. Exhibit 6.
3. Petitioner's employer confirmed that petitioner's employment began in April, 2013. *Id.*
4. The petitioner did not notify the county agency of his employment during the period of May 1, 2013 through July 31, 2013.
5. The petitioner's net household income was above the gross income limit of \$1,211.00 for each of the months of May through July, 2013, and his household was therefore income ineligible for FS benefits during that period. Exhibit 3.
6. The county agency sent a September 25, 2013, Notice of FS Overissuance to the petitioner stating that he had received \$220.00 in FS overissuance in Claim # [REDACTED] during the period of May through July, 2013, due to failure to timely report his employment and earned income to the county agency. See Exhibit 7.

DISCUSSION

At hearing the county representative established that the petitioner failed to timely report to the county agency his employment and earned income at [REDACTED]. As a result, petitioner's earned income was not budgeted as income to the FS household in determining the petitioner's FS household eligibility. The county agency established that petitioner's gross household income was above the gross income limit of \$1,211.00 for each of the months of February through June, 2010 and was therefore income ineligible for FS benefits. The petitioner did not contest that he had received FS benefits during the months of May through July, 2013. Furthermore, petitioner did not offer any evidence to refute the accuracy of the county agency's FS overpayment determination of \$220.00 for that overpayment period.

The petitioner contended that he started working in March, and thought that his FS benefits would be expiring at the end of June. In any event, 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 to recover the overpayments of FS benefits to the petitioner during the months of May through July, 2013, due to failure to timely report to the county agency her employment and earned income.

CONCLUSIONS OF LAW

The county agency is correctly seeking to recover the overpayments of FS benefits to the petitioner during the period of May through July, 2013, due to failure to timely report to the county agency his employment and earned income.

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 11th day of December, 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 Avenue
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 December 11, 2013.

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