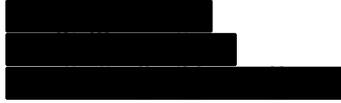




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/153041

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 23, 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 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$1,227 for the period of March 6, 2013 – May 31, 2013.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Jose Sylvestre  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On March 6, 2013, the Petitioner applied for FS benefits. She accurately reported earned income of \$1,436.80/every two weeks.

3. On March 8, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her application for FS benefits was denied because her household's gross monthly income exceeded the program limit. The agency also issued a Notice of Proof Needed requesting verification of employment.
4. On March 11, 2013, the agency completed the Petitioner's FS interview. The agency updated the Petitioner's case and incorrectly budgeted the Petitioner's income as \$1,436.80/month.
5. On March 13, 2013, the agency issued a Notice of Decision to the Petitioner informing her that she was approved to receive FS benefits of \$429 for March, 2013 and effective April 1, 2013, she was eligible for \$512/month. The notice also indicated that this allotment of benefits was based on earned income of \$1,436.80/month from Todd Esser and Assoc.
6. On March 18, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would decrease to \$407/month effective April 1, 2013. The notice also indicated that this allotment of benefits was based on earned income of \$1,436.80/month from Todd Esser and Assoc.
7. The gross income limit for eligibility for a household of four was \$2,498.
8. On May 13, 2013, a 2<sup>nd</sup> party review was completed of the Petitioner's case. The review found that the agency had incorrectly calculated the Petitioner's monthly income.
9. On May 14, 2013, the agency issued a Notice of Decision to the Petitioner informing her that effective June 1, 2013, her FS benefits would end due to income exceeding the program limit.
10. On September 16, 2013, the agency issued a Notification of FS Overissuance and worksheets informing the Petitioner that the agency intends to recover an overissuance of FS benefits in the amount of \$1,227 for the period of March 6, 2013 – May 31, 2013.
11. On October 23, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

The federal regulation concerning FS overpayments requires the State agency 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), see also, FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

A BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012), indicates that the "discovery" date is not the date of the agency's FS Overpayment Notice, but instead the "the date that the ESS [agency] became aware of the potential that an overissuance may exist." In this case, the agency became aware of a potential for an overissuance in May, 2013 when it did a 2<sup>nd</sup> party review of the Petitioner's case. This is clearly an agency error.

When a household receives more FS than it was entitled to receive, it must be recovered by the agency. FoodShare Wisconsin Handbook, 7.3.1.9. Here, the alleged overpayment sought by the agency occurred in the 3 months prior to the discovery date, so the agency may seek recovery of the benefits.

However, in a fair hearing concerning the correctness of an overpayment of benefits, including the Food Share program, the burden of proof is on the agency. The agency must demonstrate a prima facie case

establishing by the preponderance of the evidence that the overpayment occurred as determined, and must be recovered.

The Petitioner concedes that the agency incorrectly budgeted her income as \$1,436.80/month instead of \$1,436.80/every two weeks or \$3,089.12. She argues that she should not be penalized for the agency error by being required to pay back the benefits.

I reviewed the agency documentation. Based on the undisputed facts that Petitioner's gross monthly income was \$3,089.12 and the gross income limit for a household of four was \$2,498, the agency is correct that the Petitioner was not eligible for FS benefits for the period of March 6, 2013 – May 31, 2013. The FS regulations require the agency to recover any overissuance even if it is due to agency error. The Petitioner is not being penalized, rather the agency is recovering benefits to which the Petitioner was never entitled to receive. I do, however, recognize the hardship this unfortunate error causes to the Petitioner.

Based on the evidence submitted and the pertinent regulations, I conclude that the agency properly seeks to recover an overissuance of FS benefits in the amount of \$1,227 from the Petitioner for the period of March 6, 2013 – May 31, 2013.

### **CONCLUSIONS OF LAW**

The agency may recover an overissuance of FS benefits in the amount of \$1,227 from the Petitioner for the period of March 6, 2013 – May 31, 2013.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby is, 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 Milwaukee,  
Wisconsin, this 13th day of December, 2013

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\sDebra Bursinger  
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 13, 2013.

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